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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [Redacted] Office: HARTFORD  
MSC 02 197 62773

Date:

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**JUN 08 2009**

IN RE: Applicant:



APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Hartford, Connecticut. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence and continuous physical presence requirements for legalization under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. *See* 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the

factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native of Pakistan who claims to have lived in the United States since July 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on April 15, 2002.

In a Notice of Intent to Deny (NOID), dated March 15, 2005, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982, resided continuously and was continuously physically present in the United States during the requisite periods. The applicant was granted 30 days to submit additional evidence.

The applicant did not timely respond to the NOID and on August 24, 2006, the director issued a decision denying the application based on the reasons stated in the NOID.

On appeal counsel asserts that the applicant timely responded to the NOID, but that the director did not acknowledge receipt of the applicant’s response to the NOID, did not take into consideration the information and additional documentation submitted by the applicant in his

decision to deny the application.<sup>1</sup> In counsel's view, the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence and continuous physical presence requirements for legalization under the LIFE Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that he has not.

The applicant has submitted conflicting and questionable documents in support of his claim that he entered the United States before January 1, 1982, resided continuously in an unlawful status through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988, consisting of the following:

- A copy of a two-year residential lease agreement dated June 4, 1979, between **R&H Realty** in Brooklyn, New York as landlord and the applicant, for [REDACTED] Brooklyn, New York, beginning August 1, 1979 ending July 31, 1981.
- Two letters from Wakefield Bakery & Pastry located in Brooklyn, New York, dated in 1980 and 1981, indicating that the applicant was employed by the company in February 1980, but was asked to resign after a short period of employment – sometime in 1980
- An affidavit by [REDACTED], dated April 14, 2005, attesting that he had known the applicant since 1980, that the applicant lived in Brooklyn, New York and later lived with his Uncle, [REDACTED] in Brooklyn, New York.

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<sup>1</sup> The record reflects that the counsel submitted a letter dated April 15, 2005, as well as a copy of an affidavit from [REDACTED] dated April 14, 2005, in response to the NOID. It is unclear from the record when counsel submitted these documents. In a Motion to Reopen (MTR), counsel asserted that the documents were submitted in a timely manner, but that the director disregarded the documents in his decision to deny. The director in rejecting the MTR indicating that the response to the NOID and the additional documents were untimely and denied the applicant's MTR. The director forwarded the application to the AAO as an appeal. The AAO will conduct a *de novo* review all documentation submitted by the applicant in support of his application to determine whether the applicant has met the continuous residence and continuous physical presence in the United States during the requisite periods.

- A partially legible bill from Brooklyn Union Gas Company, dated sometime in 1980 and a letter from New York Health and Hospital Corporation, dated February 23, 1980, regarding an outstanding bill. Both letters were addressed to the applicant at [REDACTED]

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The copy of the two-year residential lease agreement dated June 4, 1979, between R&H Realty in Brooklyn, New York as landlord and the applicant as tenant, for [REDACTED] New York, dated June 4, 1979, beginning August 1, 1979 ending July 31, 1981, does not appear to be genuine. The lease agreement was signed by the applicant and the landlord on June 4, 1979. However, the applicant stated that he entered the United States for the first time on July 15, 1980. Therefore, it is impossible for the applicant and R&H Realty to have signed a lease agreement on June 4, 1979 – almost one year before the applicant entered the United States. Also, the lease agreement was for [REDACTED], however, on the Form I-687 (application for status as a resident alien) dated February 2, 1992, the applicant indicated his residential address during the same time period as [REDACTED] Brooklyn, New York.

The inconsistencies between the lease agreement and other information in the record, cast considerable doubt on the authenticity and credibility of the lease agreement as evidence of the applicant's residence in the United States during the requisite period and calls into question the veracity of the applicant's claim that he has resided continuously in the country from before January 1, 1982 through May for 1988. Additionally, the lease agreement does not bear any stamp or other official markings to authenticate the date it was written. Nor is the lease supplemented by rental receipts or utility bills to establish that the applicant resided at the address during the period indicate. Given the inconsistencies and possible fraud discussed above, the residential lease agreement has little probative value. It is not persuasive evidence that the applicant resided in the United States during the periods 1979 to 1981, much less during subsequent years through May 4, 1988.

The applicant stated on the Form I-687 that he was employed by Wakefield Bakery and Pastry Shop as a helper from April 1, 1980 to March 1, 1984. In support of this claim, the applicant submitted two letters from Wakefield. The first letter dated May 10, 1980, from [REDACTED] manager, stated that according to the company records, the applicant was employed from February 11, 1980, as a baker's helper, that the applicant had a serious problem in working with other employees, and after being warned several times by his supervisor and failed to improve, the applicant was asked to resign. This letter written in 1980, implies that the applicant was let go by the company sometime in 1980 because of problems at work. The second letter dated January 10, 1981, from [REDACTED] account manager, referred to an agreement between the company and the applicant "several months ago," a settlement check and other documents enclosed with an instruction for the applicant to sign the documents and return them to the office as soon as possible. These two letters strongly indicate that the applicant allegedly worked for the company in 1980. Therefore the letters are inconsistent

with the employment information provided by the applicant on the Form I-687. Furthermore, the letters are not supplemented by any tax records, earnings statements or w-2 forms to show that the applicant was actually employed by the company. The applicant did not submit a copy of the check referred to in the January 10, 1981 letter or copies of the other documents referred in the letter. Thus, the employment documentation has little probative value. They are not persuasive evidence that the applicant resided in the United States from before January 1, 1982 through May 4, 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant – consisting of the affidavit from [REDACTED] the partially legible invoice from Brooklyn Union Gas Company, and the statement from New York Health and Hospital Corporation – is suspect. Thus it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status and was continuously physically present in the United States during the requisite periods.

For example, the affidavit from [REDACTED] claims to have personal knowledge that the applicant resided in Brooklyn, New York since 1980, but did not indicate how he acquired that knowledge. [REDACTED] did not indicate any of the applicant's addresses in Brooklyn, despite the fact that [REDACTED] claims that at some point, the applicant resided with his own uncle in Brooklyn. Considering the length of time he claims to have known the applicant – since 1980 – [REDACTED] provided remarkably very little details about the applicant's life in the United States, such as where he worked, and the nature and extent of his interaction with the applicant over the years. Nor is the affidavit accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiant's personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavit has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(i)(1) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility