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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE:

[REDACTED]

Office: NEW YORK

Date:

JUN 10 2009

[REDACTED] - consolidated herein]
[REDACTED] - consolidated herein]

MSC 01 275 60192

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, reopened, and denied again by the Director, New York, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he had entered the United States before January 1, 1982, and had resided continuously in the United States from then through May 4, 1988.

On appeal, counsel for the applicant submits a brief and additional documentation.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information. Documentation that does not cover the required period is not relevant to a determination of the alien's presence during the required period and will not be considered or accorded any evidentiary weight in these proceedings.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on July 2, 2001. The director denied the application on February 1, 2008. The applicant, through counsel, filed a timely appeal from that decision on February 29, 2008.

The issue in this proceeding is whether the applicant has established that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant has submitted the following documentation in an attempt to establish his continuous unlawful residence in the United States during the requisite time period:

Employment Letters:

1. A letter dated in June 1991 from El Barrio Car Service in New York, New York, stating the applicant had been employed from October 1981 to July 1985.
2. An affidavit dated in January 2008 from [REDACTED] stating he was an owner of Easy's Car Service on Coney Island Avenue in Brooklyn, New York, and that the applicant worked for him from November 1981 until 1982 detailing and waxing cars for customers.

The employment letters provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address at the time of employment; identify the exact periods of employment; show periods of layoff; 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.

Organization Letter:

3. A letter dated in July 2001 from [REDACTED] Secretary of the Muslim Community Center of Brooklyn, New York, stating the applicant had been "participating in Friday Prayers regularly since November 1981."

The letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does not show the applicant's inclusive dates of membership and the address(es) where the applicant resided throughout the membership period. Furthermore, it does not establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records).

Affidavits from Acquaintances:

4. A letter dated in April 2008 from Council Member [REDACTED], Chair of the Immigration Committee, the Council of the City of New York, stating the applicant "...has been residing at [REDACTED] and is the owner of ESNA Construction Corp. for 13 years.... He has been living in the United States since 1981."
5. An affidavit dated in December 2007 from [REDACTED] stating he met the applicant in January 1986.
6. An affidavit dated in June 2001 from [REDACTED] stating the applicant had been present in the United States from 1986 to 1988.
7. An affidavit dated in January 2008 from [REDACTED] stating he had known the applicant since 1981.

8. An affidavit dated in January 2008 from [REDACTED] stating he had known the applicant since late 1981 – that the applicant used to work at Easy’s Service Center on Coney Island Avenue in Brooklyn, and did waxing, cleaning, and detailing work on his car.
9. An affidavit dated in February 2008 from [REDACTED] stating he first met the applicant in late 1981/early 1982 when the applicant was an employee of a service center on Coney Island Avenue in Brooklyn, and that in December 2007, he was happy to have talked and had coffee with the applicant at a gas station on Stillwell Avenue and Kings Highway in Brooklyn.

The affidavits generally lack details as to how the affiants first met the applicant, what their relationships with the applicant were, how frequently and under what circumstances they saw the applicant during the requisite period, and provide few details that would lend credibility to their claimed relationships with the applicant or a basis for concluding that they actually had direct and personal knowledge of the events and circumstances of the applicant residence in the United States throughout the requisite period. As such, the statements can only be afforded minimal weight.

Other Documentation:

10. A letter from [REDACTED] in Brooklyn, New York, stating the applicant was examined and treated in December 1981.
11. A document from Diagnostic Imaging in Staten Island, New York, indicating the applicant was seen on October 25, 1981.
12. An un-notarized letter dated in March 1987 from [REDACTED], in Brooklyn, New York, stating the applicant had been a patient since November 1981.
13. Photographs that are of little probative value as the date they were taken is indeterminable.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children’s birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists of doctors’ letters and a medical record placing him in the United States in late 1981 and third-party affidavits (“other relevant documentation”) which lack specific details.

It is noted that the record also reflects that:

- on February 25, 1993, the applicant signed a Form G-325, Biographic Information sheet, stating he had been self-employed “selling flowers” since 1984.
- on March 1, 1993, the applicant filed a Form I-589, Request for Asylum in the United States;
- on December 20, 1993, the applicant was married to [REDACTED];
- on January 12, 1994, the applicant signed a Form G-325, stating his last address outside of the United States for more than one year was in Sialkot, Pakistan, from February 1962 to June 1993;
- on January 20, 1994, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the applicant’s behalf to qualify him as the spouse of a United States citizen. The petition was denied on August 24, 1994;
- on March 31, 1997, the applicant was married to [REDACTED], a United States citizen;
- on April 3, 1997, the applicant withdrew his Form I-589 application;
- on September 11, 1997, the applicant was married to [REDACTED];
- on September 23, 1997, [REDACTED] filed a Form I-130 on the applicant’s behalf – also to qualify him as the spouse of a United States citizen and the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 and Form I-485 were denied on August 23, 2004; and,
- on June 1, 2001, the applicant signed a Form G-325 stating that his only prior spouse was [REDACTED].

As indicated above, there are discrepancies and inconsistencies in the record. It appears as if the applicant has been married at least three times, but there are no divorce certificates on file, and the applicant has not provided credible submissions regarding his marital record. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

It is concluded that the applicant has failed to establish, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status

to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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