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Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

MSC 01 307 60406

Office: GARDEN CITY

Date: MAY 06 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 Garden City, 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 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 December 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on August 3, 2001.

In a Notice of Intent to Deny (NOID), dated November 27, 2006, the director indicated that the applicant had not submitted sufficient credible evidence to establish his claim that he entered the United States before January 1, 1982, resided continuously in the country in an unlawful status through May 4, 1988, and was continuously physically present in the country from November 6, 1986 through May 4, 1988. The director indicated that the affidavits submitted by the applicant in support of his claim were substantively deficient. The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted additional documentation. On August 28, 2008, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response were insufficient to overcome the grounds for denial.

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. Counsel submits no additional evidence with the appeal.

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 documentation submitted by the applicant 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, consists of the following:

A "To Whom it May Concern" letter from [REDACTED] of Parkland Construction Company in Brooklyn, New York, dated August 12, 1999, stating that the applicant worked with the company as an independent contractor from February 1983 to October 1987.

A letter from [REDACTED], secretary of Muslim Community Center Of Brooklyn, Inc. dated September 27, 1999, stating that the applicant had been participating in Friday prayers at the center since 1983.

Several affidavits – dated in 1992, 1999 and 2008 – from individuals who claim to have known the applicant in the United States since the 1980s.

Several photocopied envelopes addressed to the applicant at the addresses he claims in the United States from individuals in Pakistan. Some of the envelopes have illegible postmarks and others have postmarks that appear to have been altered by hand.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documents are not probative and not credible.

The letter from [REDACTED] of Parkland Construction Company does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment and did not indicate whether there were periods of layoff. Mr. Arif stated that the applicant worked for the company as an independent contractor but did not indicate the source of his statement, did not indicate whether his information about the applicant was based on company records and whether such records is available for review. Neither the

applicant nor [REDACTED] supplemented the letter with any earnings statements, pay stubs, or tax records demonstrating that the applicant actually worked with the company during the periods indicated. In addition, [REDACTED] did not provide any information about the applicant's whereabouts prior to 1983. Thus, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided in the United States 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 as required for legalization under the LIFE Act.

The letter from [REDACTED] secretary of Muslim Community Center of Brooklyn Inc. in Brooklyn, New York, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED] stated that the applicant had been participating in Friday prayers since 1983, but did not specify if and when the applicant became a member of the mosque, did not indicate where the applicant lived at any point in time between 1983 and 1988, how and when he met the applicant, and whether his information about the applicant was based on [REDACTED] personal knowledge, the mosque's records, or hearsay. Since the letter does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), it has little probative value. The letter is not persuasive evidence of the applicant's continuous residence and continuous physical presence in the United States during the periods required for legalization under the LIFE Act.

The affidavits in the record from individuals who claim to have known the applicant in the United States during the 1980s, have minimalist formats with general information about the applicant. The affiants provided remarkably few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with the applicant over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Only one affiant claims to have known the applicant before January 1, 1982. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are 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.

As for the photocopied envelopes addressed to the applicant at the various addresses he claims in the United States, some have illegible postmarks and others have postmarks that appear to have been altered by hand, and since the originals are not in the file, it is impossible to determine the dates of the postmarks with any certainty. Thus the photocopied envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United

States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the country from November 6, 1986 to 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.