U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: Baltimore Date: DEC 20 2004

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. All documents have been returned to the office that originally decided your case. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not established his claim that he entered the United States in November of 1981. The director also found that the applicant had not substantiated his second claim that his authorized stay as a visitor was only for one month, (causing him to be in an illegal status in December 1981) instead of six months as he claimed at his December 3, 2002 interview. The director also determined that the applicant entered the United States on a valid nonimmigrant visa in December 1984 and had been in a lawful nonimmigrant status at some point during the qualifying time period. The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the applicant has demonstrated that he was in unlawful status throughout the period from 1/1/82 to 5/4/88. Counsel states that any absence was merely a brief, innocent, and casual absence from the United States. Counsel further states that no single absence exceeded 45 days and that the applicant, at all relevant times, maintained residence in the United States. Counsel indicates that any departure from this country was not the result of an order of deportation. Counsel argues that as Citizenship and Immigration Services is the entity in charge and in possession of its records, it can easily verify whether a visa in a B-2 category from Bangladesh had been issued for one month or six months in 1981 and that it is the Service's burden to come forward with evidence that the visas in this category, at that time, were being issued for a period of time that was different than 30 days. Counsel concludes that even though the applicant in this case applied for and received a visitor's visa in 1984, his intent was to violate that visa and therefore he was not in the United States in a legal nonimmigrant category.

Counsel requests that the applicant's appeal be held in abeyance pending the outcome of another adjustment of status application filed by him, which is based upon his marriage to a United States citizen. Counsel states that the respondent reserves the right to reactivate this appeal under the LIFE Act.

Cases received by the Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS or the Service) are generally processed in chronological order by date of receipt as individual actions. Counsel's request that the applicant's appeal be held in abeyance pending the outcome of another adjustment of status application will not be entertained. Additionally, the concept of the right to reactivate an appeal will not apply in this case.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("*CSS*"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("*LULAC*"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("*Zambrano*"). *See* section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." *See* 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his 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. 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.
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> (ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time <u>or</u> that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

In an attempt to establish continuous unlawful residence since November 1981, as claimed on the applicant's Biographic Information Form G-325A, the applicant furnished an affidavit from his father dated November 28, 2002 attesting that he brought his son with him when he came to the United States during November, 1981. His father states that he and his son both came with valid passports and obtained valid visitor visas from the United States Embassy in Dhaka, Bangladesh before their arrival in the United States. He further states that after approximately four months, he left and returned to Bangladesh but his son stayed in the United States to live with a relative. The applicant's father also states that during November 1984, his son visited family in Bangladesh for a few weeks and then returned to the United States to resume his residency in this country.

The record contains no copies of either the father's or the applicant's visitor visas, or more importantly, their Arrival/Departure Record(s), Form I-94. These forms would show when the applicant and his father were admitted to the United States, and for how long. The father's affidavit does not explain whether or not the applicant was in a valid nonimmigrant status on January 1, 1982. Additionally, even given this statement by the applicant's father, the record contains no convincing evidence that the applicant even entered the United States in November 1981, or that he was ever issued a valid nonimmigrant visa for that purpose in 1981. In

the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was know to the Government as of such date. *See* 8 C.F.R. § 245a.15(d)(2). The applicant has failed to establish the expiration of his period of authorized stay before January 1, 1982 and has not shown that his unlawful status was known to the Government prior to January 1, 1982. Therefore, the appeal shall be dismissed for these reasons.

The record shows that the applicant entered the United States on a legal basis using a nonimmigrant visitor's visa in 1984. Absent a showing that the applicant was in this country in an illegal status since prior to January 1, 1982, this legal entry into this country would be fatal to a claim of continuous residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988. *See* 8 C.F.R. § 245a.11(b) (*supra*). Consequently, the appeal shall be dismissed for this additional reason.

Beyond the decision of the district director, the applicant has provided minimal documentation to establish that he actually resided in the United States during the qualifying period. The applicant was ten years old at the time of his claimed entry into this country in 1981 until his claimed departure in 1984. Some of the documentation that is usually forwarded in a case such as this is school and inoculation records and other documents and memorabilia that would accrue to a young man of pre-teen age. Although he has provided affidavits covering the time that he purportedly lived in this country, there is a notable absence of contemporary documentation to support a finding of eligibility. As the appeal will be dismissed for the above reasons, this issue need not be examined further.

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