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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 16 2008

MSC 02 144 62455

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

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the evidence demonstrates the applicant's eligibility under the LIFE Act. Counsel submits additional evidence on appeal.

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 amenability to verification. 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.

In the Notice of Intent to Deny (NOID), dated July 18, 2006, the director stated that the applicant had failed to submit evidence demonstrating his continuous unlawful residence in the United States during the requisite period. The director noted that the applicant had submitted questionable applications, specifically, an I-700 application that had been denied, and, an asylum application and a supporting Form G-325A that reveals that the applicant had resided in Bangladesh until 1985. The director determined that the applicant could not establish his continuous residence throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, dated September 1, 2006, the director noted that the applicant failed to respond to the NOID. Therefore, the director denied the application based on the reasons stated in the NOID.

The AAO notes that the applicant claimed that he did not receive the NOID. However, the record reflects that the director mailed the NOID to the applicant's address of record, which is his current address and is the same as the address on the denial notice; and, the NOID was not returned as undeliverable. The AAO, however, mailed a copy of the NOID to the applicant, on July 10, 2008, and granted him thirty (30) days to submit additional evidence.

In his response, counsel for the applicant states that the applicant was misguided by the preparer of the I-700 who made errors in the application. Counsel references various letters, affidavits, and documents, which counsel asserts establishes the requisite continuous residence. Counsel submits additional evidence with his response to the reissued NOID.

The AAO, however, does not base its determination on information contained in the applicant's I-700, and statements or documents submitted in support of the I-700, nor information revealed by the adjudication of the I-700. As discussed below, the AAO has made a *de novo* review of the evidence of record as it pertains to the requisite continuous residence, and bases its decision solely on that record without reference to the I-700 application or information pertaining to that application.

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 AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

Upon a *de novo* review of all of the evidence in the record as it pertains to the requisite continuous residence. The AAO finds that the evidence submitted does not establish that the applicant is eligible for the benefit sought.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from prior to January 1, 1982, through May 4, 1988.

The record reflects that the applicant submitted numerous affidavits, letters, and other evidence, as evidence to support his Form I-485 application. The AAO has reviewed the entire record as it pertains to the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

Contrary to the applicant's claim that he has resided in the United Stated since prior to January 1, 1982, the record points to the applicant's residence in Bangladesh up until 1985. The record reflects that the applicant indicated on his asylum application, and testified at his asylum interview, that he first entered the United States in early 1985. In addition, in support of his asylum application the applicant submitted various documents which indicate that he resided in Bangladesh in 1983 -1985. For example, in support of his asylum claim the applicant submitted a letter from the Principal of the Beanibazar College, in Sylhet, Bangladesh, which confirms that the applicant attended the college during the academic years 1983-1984, and 1984-1985. Also in support of his asylum claim, the applicant submitted medical records, and a Discharge Summary from Niramoy Poly Clinic, located in Sylhet, Bangladesh, which indicates that the applicant was treated at that clinic on March 30, 1984. These records, individually, and cumulatively, indicate that the applicant resided in Bangladesh from 1983 to 1985. These documents contradict the applicant's claim that he has resided in the United States from prior to January 1, 1982 through May 4, 1988. The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut this evidence in the record.

The applicant has submitted various affidavits attesting to the applicant's presence in the United States throughout the requisite period. Contrary to counsel's assertion, the documentation submitted by the applicant in support of his claim of continuous residence throughout the requisite period, is not credible. As noted above, the applicant has provided information in support of his asylum application which contradicts his claim that he has continuously resided in the United States since

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

prior to January 1, 1982. The applicant has failed to overcome the evidence of record. The record reflects that the applicant resided in Bangladesh until early 1985. Given the inconsistencies, discussed above, the remaining testimony is deemed not credible.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). 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 is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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