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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK

Date: FEB 03 2009

MSC 03 212 60517

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. The file has been returned to the office which 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant states that the director's decision was in error and that the applicant has submitted sufficient evidence to establish that he resided unlawfully in the United States for the requisite period. The applicant does not submit additional evidence on appeal.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(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. 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 petitioner 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 or petitioner 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 or petition.

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).

On June 22, 2007, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant had not submitted sufficient evidence of unlawful residence, and detailed inconsistencies in the applicant's testimony and affidavits. The director noted that the applicant

had submitted affidavits that were neither credible, nor amenable to verification. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 31, 2007, the director denied the application based on the reasons for denial stated in the NOID. The director noted that the applicant responded to the NOID but failed to overcome the reasons for denial. The director also noted that the applicant submitted affidavits that were neither credible, nor amenable to verification, including those from [REDACTED], and [REDACTED].

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 during the requisite period. The applicant submitted evidence, including several affidavits, letters, and receipts, as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Contrary to the applicant's assertion, he has provided questionable documentation. The record reflects that the applicant submitted Biographic Data Forms, G-325A, signed on March 25, 2002, and on April 26, 2003, stating that he resided at [REDACTED] New Market, Dhaka, Bangladesh, from May 1964 until August 1985. This evidence points to the applicant's presence in Bangladesh during the requisite period. Yet, the applicant claims to have resided in the United States since July 1981, and has submitted affidavits, receipts, and letters in an attempt to establish that he has resided continuously in the United States from prior to January 1, 1982. It is noted that, as discussed below, the applicant also stated that he had departed the United States, for Bangladesh, in April 1985, to visit family, and returned to the United States in August 1985.

The applicant has failed to reconcile these discrepancies, and has failed to provide reliable evidence to overcome the deficiencies in the evidence submitted. The above unresolved discrepancies cast considerable doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. 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). 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.

It is also noted that if it was not the case that the applicant had resided in Bangladesh from May 1964 until August 1985, the applicant is ineligible for LIFE Act legalization as he has had a prolonged absence from the United States that exceeded *forty-five (45) days* between January 1, 1982, and May 4, 1988. The record of proceedings indicates that the applicant was outside the United States beyond the period of time allowed by regulation. The applicant claims that he has resided continuously in the United States since July 1981. However, the applicant stated on his Form I-687 application, that he had departed the United States, for Bangladesh, in April 1985, to

visit family, and returned to the United States in August 1985. The applicant also submitted his own affidavit, sworn to on August 12, 2004, where he confirms that he had departed the United States in April 1985, to visit family, and returned to the United States in August 1985. This evidence confirms an absence of well over 90 days. Yet, in the same affidavit, the applicant also contradicts himself and states that "... at no time have I been out of this Country [the United States] for more than 45 days." Clearly, the applicant's absence from the United States from April 1985 to August 1985 constitutes a break in his continuous residence.

The applicant does not assert that his absence was for emergent reasons. Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant does not submit any evidence to establish that his prolonged absence was for an emergent reason. Therefore, he has failed to establish that his prolonged absence from the U.S. was due to an "emergent reason."

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence 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.