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FILE:

MSC 03 169 61337

Offices: GARDEN CITY

Date: FEB 26 2009

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: SELF-REPRESENTED

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.

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 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 ground that the applicant failed to establish 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.

On appeal the applicant asserts that he has submitted sufficient documentation to establish that he meets the continuous residence requirement 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 Bangladesh who claims to have lived in the United States since October 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 18, 2003.

In a Notice of Intent to Deny (NOID), dated May 31, 2007, the director indicated that the applicant had not submitted credible evidence to establish that he entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988. Specifically, the director cited to evidence in the record that shows the applicant traveled outside the United States to Bangladesh from August 27, 1987 to October 30, 1987, and indicated that the absence was in excess of 45 days which interrupts the applicant’s continuous residence in the United States. The director also cited inconsistencies between the applicant’s testimony at his LIFE legalization interview on January 25, 2005 regarding (1) his initial entry into the United States, (2) the number of absences from the United States during the period 1981 through 1988, and (3) his continuous residence in the United States during the statutory period for LIFE legalization. The director indicated that the discrepancies cast doubt on the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant offered some explanation for the evidentiary discrepancies cited in the NOID and submitted additional documentation.

On August 4, 2007, the director issued a Notice of Decision denying the application on the ground that the rebuttal information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial.

On appeal, the applicant reiterates his eligibility for LIFE legalization. The applicant did not submit any additional documentation 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.

At his LIFE legalization interview on January 25, 2005, the applicant stated that he traveled to Bangladesh on August 27, 1987 to visit his parents who were involved in an accident and returned to the United States on October 30, 1987. In an affidavit signed by the applicant on December 9, 2004, the applicant stated that he left the United States on August 27, 1987 to Bangladesh to visit his family and returned to the United States on October 30, 1987. On a form for determination of class membership in Catholic Social Services (CSS) v. Thornburgh (MEESE), dated December 10, 1987, the applicant again stated that he departed the United States on August 27, 1987 to Bangladesh to visit his family and returned to the United States on October 30, 1987.

The absence from the United States listed above far exceeded the 45-day maximum for a single absence, prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). An absence of such duration interrupts an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

The applicant claimed in a statement on January 25, 2005, that he traveled to Bangladesh from August 27, 1987 to October 30, 1987, because his parents were involved in an accident. The applicant submits a letter from [REDACTED] of Holy Family Red Crescent Medical

College Hospital in Dhaka, Bangladesh, dated July 24, 2007, stating that the applicant's parents were "admitted under my service from August 20, 1987 to October 30, 1987 being victimized in a road traffic accident." [REDACTED] indicated that the applicant's mother "had has multiple surgeries and fixation of multiple bone fracture", was "about month of treatment in the hospital" and his father was discharged in a stable condition "after 2 months of extensive treatment." However, there is no documentation to establish that the applicant's absence of almost two months was necessitated due to his parent's accident. The letter from [REDACTED] is short on details with no accompanying medical records to establish that the applicant's parents were injured and under his care for two months as claimed. The applicant did not provide any explanation as to why he had to remain in Bangladesh for two months and why he was unable to return to the United States within 45 days. Thus, the AAO finds that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return(s) to the United States from Bangladesh within the 45-day period allowed in the regulation.

Thus, the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO notes that the file contains two Forms G-325A (Biographic Information) – one dated February 14, 2003, which the applicant submitted with his Form I-485 in March 2003, and another dated April 16, 2002, which the applicant submitted with a prior Form I-485 he filed in April 2002. On the February 14, 2003, Form G-325A the listed his last address outside the United States for more than one year as [REDACTED] Dhaka, Bangladesh from November 1965 (year of birth) to October 1987. On the April 16, 2002, Form G-325A, the applicant listed his last address outside the United States for more than one year as [REDACTED] Dhaka, Bangladesh, from November 1965 (year of birth) to October 1985. On a Form I-765 (Employment Authorization) the applicant filed in April 2002, he responded to question # 12 (Date of Last Entry into the U.S.) as October 12, 1985, through Miami. And at his LIFE Legalization interview on January 25, 2005, the applicant stated that he entered the United States in October 1, 1981, through Canada, resided continuously in the country except for one trip to Bangladesh on August 27, 1987 through October 1987. There is no indication anywhere in the record that the applicant traveled outside the United States in 1985. Thus, the documentation in the file contain contradictory information about (1) the applicant's initial date of entry into the United States (1981, 1985 or 1987), and (2) his continuous residence in the United States during the 1980s.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The AAO also finds that the myriad conflicting information provided by the applicant, and his acknowledgement of an extended trip to Bangladesh that interrupts his continuous residence in the United States during the requisite period for LIFE legalization, undermines the credibility of other documentation submitted by the applicant – which consists primarily of photocopies of letters and affidavits from individuals who claim to have known the applicant in the 1980's – as evidence of his residence in the United States during the period for legalization under the LIFE Act.

Based on the foregoing, the AAO concludes that the applicant has failed to establish 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, as required under section 1104(c)(2)(B)(i) 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.