U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEW YORK Date: MAR 24 2009
MSC 02 123 61217

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. 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 New York City. 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 resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the director did not give due weight to the evidence of record, and submits some additional documentation.

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.)

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 1980, filed his application for permanent resident status under the LIFE Act (Form I-485) on January 31, 2002. As evidence of his residence in the United States during the 1980s, the applicant submitted the following:

- An affidavit by of Astoria, New York, dated January 28, 2002, stating that he had personal knowledge that the applicant resided at [redacted] in Astoria from 1981 to 1989.

At his interview for LIFE legalization on September 16, 2003, the applicant submitted the following additional document:

- An affidavit by [redacted], the imam of the Madina Masjid, [redacted]c. in New York City, dated September 15, 2003, stating that he had known the applicant since 1987 and that the applicant used to come to the mosque for religious occasions.

On February 1, 2008 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's continuous residence in the United States during the requisite period for LIFE legalization. The applicant was granted 30 days to submit additional evidence.

In response the applicant submitted the following documentation:

An affidavit by [redacted] of Brooklyn, New York, dated February 15, 2008, stating that he met the applicant when he came to the United States in 1980, knows that he resided continuously in the country up to 1988, and that the applicant has been involved in youth soccer and other community activities.

An affidavit by [redacted], president of the [redacted]. in New York City, dated February 17, 2008, stating that he has known the applicant since 1980, when he came to the United States, and that the applicant has remained in the country continuously since then. Mr. [redacted] indicates that the applicant is currently a member of his [redacted] and was previously the sports secretary of another cultural organization in New York.

- A letter by [redacted], dated February 20, 2008, stating that he has known the applicant since 1982 when he was a busboy at the [redacted] in Brooklyn, which his father operated from 1974 to 1984.

On March 26, 2008 the director issued a Notice of Decision denying the application. The director ruled that the additional evidence submitted in response to the NOID still failed to establish the applicant's continuous residence in the United States during the requisite period for legalization under the LIFE Act.

On appeal counsel asserts that the director erred by not giving proper evidentiary weight to the documentation submitted by the applicant. In support of the appeal counsel submitted some additional documentation, including three items which relate to the applicant's claim of continuous residence in the United States during the years 1980 to 1988. They include the following:

An affidavit by [redacted]s, a resident of Long Island City, New York, dated May 12, 2008, stating that he has personal knowledge that the applicant has resided continuously in the United States since 1981, that they have occasionally gone to parties or for haircuts together, and that they play soccer.

A photocopy of a U.S. Postal Service Customer's Receipt, dated August 22, 1983, indicating a payment to an overseas recipient by the applicant, whose address is identified as [redacted] in Astoria, New York.

- A photocopy of a receipt for a payment of $250 by the applicant, whose address is identified as [redacted] in Astoria, New York, to the Bangladesh [redacted]. in Jamaica, New York, dated January 15, 1988.

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 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 affidavits and letters by [redacted] and [redacted] all have minimalist or fill-in-the-blank formats with limited personal input from the authors. Considering how long they claim to have known the applicant, the authors provide remarkably few details about the applicant's life in the United States and their interaction with him over the years – particularly during the 1980s. None of the affidavits are supplemented by any letters, photographs or other documentation demonstrating a personal relationship between the affiants and the applicant in the United States during the 1980s. The AAO also notes that the letter by [redacted] states the applicant worked as a busboy at the [redacted] in Brooklyn in 1982, which was not listed by the applicant as a place of employment at any time during the 1980s on the Form I-687 (application for temporary resident status) he filed in Miami in January 1990.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See 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 the applicant's remaining evidence. *See id.*

For the reasons discussed above, the affidavits/letters from [redacted] and [redacted] have little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

As for the affidavit by [redacted] imam of the Madina Masjid in New York, it 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. Mr. [redacted] does not state when, or if, the applicant became a member of the mosque, and does not state where the applicant lived at any time during the 1980s. [redacted] is also vague about how he knows the applicant, and whether his information about the applicant is based on personal knowledge, the organization's records, or hearsay. Thus, the affidavit does not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, [redacted] does not even claim to have known the applicant before 1987, and therefore cannot attest to the applicant's continuous residence in the United States in the years 1981-1986. Accordingly, [redacted] affidavit has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

With regard to the two receipts submitted on appeal, dated August 22, 1983 and January 15, 1988, were both submitted as photocopies rather than original documents. Neither of the photocopies bears a date stamp or other official marking to verify its authenticity and time frame. Moreover, the 1988 receipt identifies the applicant's address as [redacted] in Astoria, New York, which conflicts with information provided by the applicant in his Form I-687, filed in 1990, in which he identified his address for the years 1981 to 1989 as [redacted] in Astoria. The applicant has not explained this discrepancy, which casts doubt not only on the authenticity of the 1988 receipt, but the 1983 receipt as well. *See Matter of Ho, id.* Thus, the photocopied receipts are not persuasive evidence of the applicant's residence in the United States during the years 1983 and 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that 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. 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.