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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK CITY Date: MAY 11 2009

MSC 02 061 60943

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 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 credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through the period required 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 August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on November 30, 2001.

In a Notice of Intent to Deny (NOID), dated August 13, 2007, the director indicated that the applicant had not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

The applicant responded and submitted additional affidavits. On September 23, 2007, the director issued a Notice of Decision denying the application on the ground that the information and documentation submitted in response to the NOID were insufficient to overcome the grounds for denial. The director also noted that the applicant failed to disclose that he has two children born in Bangladesh in 1983 and 1985, without evidence that his wife was residing in the United States during the 1980s.

On appeal the applicant asserts that the director was mistaken with the dates of birth of his children and that his children were born in 1981 and 1988. The applicant further asserts that the

documentation in the record is sufficient to establish that he meets the continuous residence requirement for legalization under the LIFE Act. The applicant submits no additional evidence 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.

The documentation submitted by the applicant in support of his claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status through May 4, 1988, consists of the following:

- A letter of employment by [redacted] in Brooklyn, New York, dated September 28, 1992, stating that the applicant was employed from December 1981 to June 1985, as a delivery person.
  A letter of employment from [redacted] in New York City, stating that the applicant was employed from January 1986 to December 1990, as a "salad man."
- A letter from [redacted]. in New York City, dated December 22, 1992, stating that the applicant "is personally known to me since 1981 as he used to come to this mosque to say his prayers and on various religious occasions."
- Affidavits – dated in 1992 and 2007 – from individuals who claim to have resided with or otherwise have known the applicant in the United States during the 1980s.
- A merchandise receipt with handwritten notation of the applicant's name with no address dated December 6, 1982.
- A copy of an airline ticket in the applicant's name from Trans World Airlines (TWA) indicating the following travel route: New York to London to Dhaka dated June 8, 1987.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Here the documentation is not probative and not credible.

The applicant's claim that he entered the United States in August 1981, resided continuously in the country through May 4, 1988, and made only one trip outside the United States to Bangladesh from June to July 1987, is contradicted by documentation in the record. On the Form I-485 the applicant

filed in November 2001, he indicated that he has two sons, born in Bangladesh on April 18, 1983 and August 12, 1985. On the Form I-687 dated December 28, 1992, the applicant indicated that he traveled from the United to Bangladesh in June 1987 returning to the United States in July 1987. The applicant did not indicate any other trips outside the United States during the 1980s. The record reflects that the applicant did not list the names or dates of birth of his two children on the Form I-687. The applicant has not stated and the record does not show that the applicant's wife resided in the United States during the 1980s. Thus, it is not plausible that the applicant's wife could have conceived and given birth to the applicant's two children in Bangladesh during the same period that the applicant claims that he was residing and was physically present in the United States. Also, on the Form I-485, the applicant indicated that he joined the Jatiya Party (a political party) in Bangladesh, in 1985 and served as the general secretary of the party for Lakshmipur unit in Bangladesh. This statement strongly suggests that the applicant was in Bangladesh in 1985, and possibly beyond, when he joined the political party and served as the general secretary of the party in Bangladesh. This omission and contradictions discussed above cast considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

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. *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 other evidence in the record. *See id.*

The letters of employment from [redacted] do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment, did not indicate whether there were periods of layoff. The letters did not indicate whether the information about the applicant's employment was taken from company records and whether the records are available for verification. Nor were the letters supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment documents have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The merchandise receipt dated December 6, 1982, has handwritten notations with no date stamp or other authenticating mark to verify the date it was written. The receipt did not identify the applicant's address. Thus, the receipt has not probative as credible evidence that the applicant reside in the United States in 1982 more less for periods beyond, up to May 4, 1988.

The airline ticket from TWA submitted by the applicant as evidence that he traveled from the United States to Bangladesh from June to July 1987, does not appear to be genuine. Although the date on the ticket reads June 1987, the ticket booklet shows that it was revised in March 1989. Therefore, it is impossible to issue a ticket in 1987 on a form that was not even in

existence at the time the ticked was issued. The applicant did not address this possible fraud when it was brought to his attention in the NOID. Thus, the airline ticket has no probative values.

As noted above, the applicant has provided contradictory statement and information in support of his application. 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 – consisting of affidavits and letters from individuals who claim to have resided with or otherwise known the applicant in the United states during the 1980s – is suspect and it must be concluded 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 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, 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.