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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

L2

FILE: [redacted] Office: DALLAS Date: SEP 03 2009

MSC-02-221 62300

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, Dallas, and is before the Administrative Appeals Office (AAO) on appeal.

The director denied the application in part, finding that the applicant failed to establish his unlawful status was known to the government. The director further denied the application finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that United States Citizenship & Immigration Services (USCIS) erred in finding that the applicant failed to prove that he resided continuously in the United States for the duration of the relevant period. He asserts that he entered the United States in October 1980 using a valid nonimmigrant visitor visa. He further asserts that he violated his lawful B-2 status by overstaying his B-2 visa prior to January 1, 1982, and by accepting unauthorized employment.

On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al vs. USCIS, et al,* 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

> 1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –
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> (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a Qualified Designated Agency ("QDE"), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members'); or
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> (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or
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> (C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application
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> i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),
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> ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the

applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').

2. Enumerated Categories

(1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

(2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.

(3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of
   a. reinstatement to nonimmigrant status;
   b. change of nonimmigrant status pursuant to INA § 248;
   c. adjustment of status pursuant to INA § 245; or
   d. grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is a member of the NWIRP class as enumerated above and will adjudicate the application in accordance with the standards set forth in the settlement agreement.

NWIRP provides that I-485 applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government. It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of such report in government records is not alone sufficient to rebut this presumption. Once the applicant makes such a showing, USCIS then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS fails to carry this burden, the settlement agreement stipulates at paragraph 8B that it will be found that the alien's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the

burden of establishing that he or she obtained lawful status by fraud or mistake. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 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. 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 states 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.

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).

In support of his claim of continuous unlawful residence in the United States, the applicant asserts that he entered the United States in October 1980 using a valid nonimmigrant visitor visa. The applicant has not submitted any evidence of his entry in 1981. Where an applicant is claiming that he made a pre-1982 nonimmigrant entry and that his period of authorized stay expired prior to January 1, 1982, and the applicant has no documentary evidence of these claims, the AAO shall use as guidance instructions set forth in the 2008 Stipulation of Settlement in the class-action *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.,* 88-CV-00379 JLR (W.D. Was.) (NWIRP). In the attachment to this settlement titled: Exhibit 2 Instructions and Class Member Worksheet at page 5, the NWIRP class member without documentary evidence of his

nonimmigrant entry or credible declarations regarding this entry is instructed that he may submit a sworn statement. In this case, the applicant has submitted a statement, however, the statement indicates only that he entered in October 1980, using a B-2 visitor visa. He does not indicate when or where he obtained the nonimmigrant visa, or the length of his original authorized period of stay. He does not indicate that he ever requested that his nonimmigrant status be extended. Accordingly, the AAO finds that the applicant has not established his entry to the United States prior to January 1, 1982. Additionally, even if the applicant supplied sufficient evidence of his initial entry in January 1981, he has not established that he violated this lawful status in a manner known to the government prior to January 1, 1982 as required by the NWIRP Settlement Agreement.

The applicant asserts that he accepted unauthorized employment immediately upon entering the United States in 1980. *See* 8 C.F.R. § 214.1(e)(which indicates that any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.). In support of this assertion he submits an employment letter signed by [redacted] of S&Z Trading, Inc. Mr. [redacted] indicates that the applicant worked for the company from October 1, 1980 until December 31, 1984.

This letter does not contain sufficient detail to be probative and credible. Furthermore, the letter fails to comply with the regulations set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements submitted by Mr. [redacted] fail to include much of the required information and can be afforded minimal weight as evidence of the applicant's employment during the period prior to January 1, 1982 and are therefore, not sufficient to establish that the applicant violated his visitor status by accepting unauthorized employment in a manner known to the government prior to January 1, 1982.

Furthermore, as noted by the director, this application cannot be approved because the applicant has failed to establish that he continuously resided in the United States in an unlawful status from prior to January 1, 1982 through the end of the relevant period. The evidence submitted lacks sufficient detail to be considered, and, as noted by the director, the record of proceedings contains multiple material inconsistencies. Specifically, on the Form I-485, the applicant indicated that he had four children born in Bangladesh on the following dates: April 3, 1983; May 7, 1985; June 19, 1987; and January 1, 1989. On July 14, 2004, the director issued a Request for Evidence (RFE) noting that the children were born in Bangladesh during the relevant period and requesting a copy of his wife's passport to account for her travel to the United States. The applicant responded to the RFE but he failed to address his children's births or his wife's travel to the United States.

The applicant also submitted the following evidence of his continuous residence for the duration of the relevant period:

- envelopes contained postal meter markings dated 1981, 1982, 1983, 1984.

- A letter from the Islamic Council of America Inc., signed by [redacted] indicating that the applicant began visiting the Center in October 1980 and that, to the declarant's knowledge, the applicant is currently in Florida. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter fails to comply with the above cited regulation because it does not: state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

- Affidavits from [redacted] and [redacted] who indicate that they met the applicant in 1980 and that they attended various religious functions with him. Neither affiant provides sufficient details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A letter from the applicant's landlord, containing an illegible signature, indicating that the applicant lived in the basement apartment of [redacted] since September 1, 1982. On his Form I-687, the applicant indicates that he moved to this address in October 1980. 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 unless the applicant submits 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 proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. This inconsistency casts doubt on the reliability of all of the evidence in the record.

Thus, the AAO finds that the applicant did not establish, by a preponderance of the evidence that he entered the United States prior to January 1, 1982 or that he remained in the United States in an unlawful status, for the duration of the relevant period. Furthermore, as he has not established his entry prior to January 1, 1982, the question of whether he violated his nonimmigrant visitor status prior to January 1, 1982, in a manner known to the government is moot.

Furthermore, the application may not be approved, because the evidence establishes that the applicant is inadmissible to the United States. Section 245A(a)(4)(A) of the Immigration & Nationality Act (the

Act), 8 U.S.C. § 1255a(a)(4)(A), requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status.

An alien is inadmissible if she seeks through fraud or misrepresentation to procure an immigration benefit under the Act. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). As noted above, the applicant testified that he departed the United States in 1982 and reentered the United States one month later, using his B-2 visitor visa. He asserts that he entered without disclosing that he had violated the terms of his initial visitor visa by accepting unauthorized employment. The AAO notes that the record of proceedings does not have evidence of this entry in 1982 beyond the statements of the applicant. However, even if the applicant established that he entered the United States prior to 1982, he would be inadmissible for visa fraud. Thus, the applicant is inadmissible and ineligible for legalization benefits.

Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), the cited grounds of inadmissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The AAO notes that the applicant has filed a Form I-690 Application for Waiver of Grounds of Excludability relating to the misrepresentation, and that application remains pending. However, even if the Form I-690 were approved, the application cannot be granted because the applicant has failed to meet the requirements for adjustment to temporary resident status, as explained above.

Finally, it is noted that on November 23, 1993, the applicant was ordered excluded under Section 212(a)(7)(A)(i)(I) of the Act.

Given the applicant's reliance upon documents with minimal probative value and the contradictory nature of his own testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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