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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JAN 3 0 2009

MSC 02 226 60105

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, 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 failed to demonstrate that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

On appeal, the applicant submits a statement. The applicant indicates that a brief and additional evidence will be submitted within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record will be considered complete.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on May 14, 2002. The director denied the application on September 20, 2007. The applicant timely filed an appeal from the director's decision on October 21, 2007.

The applicant is a native and citizen of Bangladesh, born on August 5, 1973, who claims to have initially entered the United States without inspection along the Canadian/U.S. border near Buffalo, New York, accompanied by her parents and a few other individuals, on December 5, 1981 – when she was eight years old. The applicant also claims to have departed the United States on only one occasion throughout the requisite time period – to Toronto, Canada, in August 1987 for a period of 17 days due to "an emergency reason." The applicant further claims that she and her parents attempted to file Forms I-687, Applications for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act) in Miami, Florida, in January 1988, but that her parents were disqualified because they had traveled to Bangladesh after November 7, 1986, without obtaining advance parole prior to their departure.[1]

The issue in the proceeding is whether the applicant has submitted sufficient documentation to establish that she entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988.

The AAO maintains plenary power to review this matter 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

[1] According to the applicant's statement contained in the record of proceeding in response to a Notice of Intent to Deny (NOID) her Form I-485 application.

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 federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In support of her application, the applicant has presented the following documentation throughout the application process:

- A letter, dated March 20, 2000, on letterhead stationary from , of Woodside, New York, stating that the applicant had been evaluated and treated in April 1986. The letter, however, is signed by J Although the director noted that, due to the discrepancy in the Dr.'s signature, the letter was questionable as to its probative value and authenticity in the Notice of Decision (NOD) to deny the application, the applicant did not address this issue on appeal.

- A letter from stating that he met the applicant and her parents at a grocery store in Buffalo, New York, in December 1981.

- Letters and affidavits from: stating that she had known the applicant since January 1987; , stating that he had known the applicant since December 1986; stating that she met the applicant in March 1987; r stating that she met the applicant in Astoria, New York, February 1982; stating that he had personally known the applicant since January 1987; stating that he met the applicant in New York in December 1984; r stating that he met the applicant in Jamaica, New York, in 1987; the Bangladesh Society, Inc, New York, stating that the applicant had been a member since February 21, 1988, and that her parents obtained membership on December 16, 1981; and, the ., stating that the applicant had been attached to the Mosque since 1985.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no valid hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v).

It is noted that although the applicant claims to have resided in the United States continuously since the age of eight years, she has not provide any school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K).

The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). These documents lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period; lack probative value; are questionable; and/or do not attest to the affiants' knowledge of the applicant's entry into the United States prior to January 1, 1982.

It is further noted that the record does not contain the original Form I-687 that the applicant claims was filed in Miami, Florida, in 1988. The applicant has not explained why the application was filed in Miami while she was allegedly living in New York at that time. On a photocopy of a Form I-687 submitted by the applicant, showing her signature dated October 18, 1991 (the date appears to have been altered), she indicates that she was married (a Form G-325, Biographic Information sheet, contained in the record indicates that she was married in Bangladesh on December 14, 1994) and had two children born in the United States - in 1995 and 2000. It appears doubtful that the applicant did, in fact, file a From I-687 in 1988 as initially claimed and that the photocopy of the Form I-687 allegedly signed in October 1991 is not valid.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is concluded that the applicant has failed to demonstrate, by a preponderance of the evidence, that she resided in continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.