

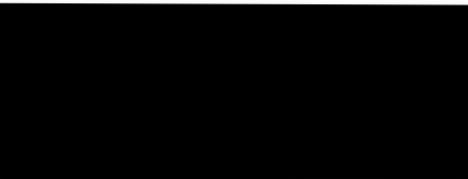
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U.S. Citizenship  
and Immigration  
Services

L2

FILE:



Office: SAN FRANCISCO

Date: APR 17 2007

MSC 02 227 60473

IN RE:

Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director erred in disregarding the witness testimony submitted by the applicant and in finding that the applicant had not submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

An applicant for permanent resident status 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. 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 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).

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

Here, the submitted evidence is not relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence throughout the application process:

- A letter dated February 13, 2005 from \_\_\_\_\_ Resident Imam at the \_\_\_\_\_, stating that the applicant has been attending prayer services there since 1984.
- A letter dated February 1, 2005 from the "Honorary Consulate of the Republic of Yemen San Francisco" stating that, after reviewing the applicant's proof of residency in the United States, the Consulate believes he has been in the United States since 1981.
- A letter dated February 28, 2003 from \_\_\_\_\_ stating that, as the applicant's girlfriend, she corresponded from Tanzania with the applicant in the United States from 1981 to 1987.
- An affidavit notarized on July 27, 1990 from \_\_\_\_\_ stating that the applicant lived with him at \_\_\_\_\_ in Oakland, California from January 1983 to February 1987.
- An affidavit notarized on July 27, 1990 from \_\_\_\_\_ stating he knows the applicant has been in the United States since March 1981 and self-employed "selling sandwiches and candies in Bart Stations."
- An affidavit notarized on July 27, 1990 from \_\_\_\_\_ stating he knows the applicant has been in the United States since March 1981 and self-employed "selling sandwiches and candies in Bart Stations."
- An affidavit notarized on July 27, 1990 from \_\_\_\_\_ listing seven addresses at which he is aware the applicant has resided in the United States.

- An affidavit notarized on July 24, 1990 from [REDACTED] listing seven addresses at which he is aware the applicant has resided in the United States.
- An affidavit notarized on July 24, 1990 from [REDACTED] stating the applicant lived with him at [REDACTED] in Oakland, California from February 1987 to February 1990.
- An affidavit notarized on July 23, 1990 from [REDACTED] stating that the applicant lived with him at [REDACTED] in San Leandro, California from March 1982 to January 1983.
- An affidavit notarized on July 23, 1990 from [REDACTED] listing seven addresses at which he is aware the applicant has resided in the United States.
- Eight envelopes (with identical stamps depicting a lesser flamingo affixed) addressed to the applicant at various addresses in the United States and postmarked at “[REDACTED]” in Tanzania in the years 1981, 1982, 1983, 1984, 1986 and 1988.
- Three envelopes addressed to the applicant (two addressed to application at [REDACTED] in Buffalo, New York and one addressed to applicant at [REDACTED] in Oakland, California) and apparently postmarked in Yemen in 1981.
- An undated letter from the applicant’s parents in Yemen stating that the applicant left for the United States in March 1981 and has not traveled to any other country since then except for a brief return visit to Yemen in 1987.
- An undated letter from the applicant’s brother in Yemen stating that the applicant left for the United States in March 1981 and has returned to Yemen only once for a brief visit in 1987.

Following an interview on January 17, 2003, the director issued to the applicant a document entitled “Intent to Deny – Request for Evidence” stating that the evidence submitted by the applicant was “not sufficient to warrant favorable consideration” and requesting further evidence of the applicant’s entry into and continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988. The director indicated that “failure to submit the requested documentation” within 90 days could “result in a denial.”

In response, the applicant’s counsel submitted additional evidence of residency and resubmitted copies of evidence previously submitted.

In a decision dated January 13, 2005, the director denied the application because the affidavits submitted by the applicant were “vague” and “unverifiable” and because investigation had revealed

that the envelopes bearing the lesser flamingo stamps were fraudulent (the Tanzanian stamp affixed to each envelope was first printed in 1990).

On appeal, counsel contends that the director erred in rejecting the third-party testimony submitted by the applicant. Counsel asserts that USCIS has placed on “unreasonably heavy burden” on the applicant to provide additional evidence of residency from 20 years ago, and that the evidence already submitted by the applicant establishes that the applicant continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant’s burden of proof.

The AAO notes that although the “Intent to Deny – Request for Evidence” issued by the director on January 15, 2003 did not comply with all the requirements for such notices found in the regulations at 8 C.F.R. § 245a.20(a)(2), the applicant has not been unduly prejudiced by this error. The regulation at 8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice. The notice issued to the applicant on January 17, 2003 was inadequate in that it did not specifically inform the applicant that the director intended to deny his application for the reasons later enumerated in the decision. However, the notice did inform that applicant that the director would likely deny the application if additional evidence of residency was not presented. The director gave the applicant sufficient notice of the deficiencies in the evidence in the January 13, 2005 decision, allowing the applicant the opportunity to address the specific reasons for denial and to submit additional evidence on appeal. The AAO finds that the applicant has been given the opportunity to make a meaningful appeal. The AAO has considered all of the evidence the applicant has presented in conjunction with his application.

Counsel does not address the director’s finding that the applicant submitted fraudulent envelopes. The AAO concurs with the director’s finding that the Tanzanian stamp depicting the lesser flamingo affixed to the envelopes bearing postmarks in the 1980s was not printed until 1990. *See* Scott 2006 Standard Postage Stamp Catalogue vol. 6 #612 (Scott 2005).

Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that the applicant manufactured documentation in support of his application. The applicant was given notice of this derogatory information in the decision, but failed to address it on appeal.

Section 212(a)(6)(C) of the Immigration and Nationality Act (the Act) provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under BIA precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

The applicant signed the Form I-485, thereby certifying under penalty of perjury that "this application and the evidence submitted with it are all true and correct."

By filing the instant application and submitting the fraudulent envelopes, the applicant has sought to procure a benefit provided under the Act using fraudulent documents and through misrepresentation of material facts. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, the finding that these envelopes were falsifications, the AAO makes a finding of fraud. An applicant for permanent resident status under the provisions of the LIFE Act must establish that he or she is admissible as an immigrant. Section 1104(c)(2)(D)(i) of the LIFE Act. Because of his attempt to procure a benefit under the Act through fraud and material misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

In addition, it is noted that much of the other evidence submitted by the applicant lacks essential detail. The affidavits (from [REDACTED], [REDACTED] and [REDACTED] listing all the addresses at which the applicant has resided in the United States provide no basis for the affiant's knowledge that the applicant resided at these addresses. The affidavits from [REDACTED] and [REDACTED] include no contact information for the affiants and are not amenable to verification. The letter from the Consulate does not bear the name of its author.

The regulation at 8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods." Preponderance of the evidence is defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5<sup>th</sup> ed. 1979). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Given the discrepancies and insufficiencies in the evidence submitted by the applicant, the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). In addition, because he has attempted to procure a benefit under the Act through fraud and material misrepresentation, he is inadmissible under section 212(a)(6)(C) of the Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

**ORDER:** The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.

**FURTHER ORDER:** The AAO finds that the applicant knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.