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**U.S. Citizenship
and Immigration
Services**

L2

FILE: [REDACTED] Office: Chicago
MSC 02 289 60130

Date: **AUG 07 2007**

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:

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he was physically present in this country in 1988 and, thereby had not established his continuous physical presence in the United States from November 6, 1986 to May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act.

On appeal, the applicant asserts that the record contains sufficient evidence to support his claim of residence in the United States for the requisite period including 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 and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act and 8 C.F.R. § 245a.11(c).

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 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish that he was continuously physically present in the United States from November 6, 1986 to May 4, 1988. Here, the applicant submitted relevant, probative, and credible evidence of both his continuous residence from prior to January 1, 1982 through the end of April 1987 and continuous physical presence from November 6, 1986 through the end of April 1987. Such evidence includes tax documents, payroll check stubs, United States Postal Service receipts, court records, rent receipts, and a Social Security Administration printout of earnings. However, evidence of both the applicant's continuous residence and physical presence in the United States from May 1, 1987 to May 4, 1988 is not relevant, probative, or credible.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act). Subsequently, on July 16, 2002, the applicant filed his Form I-485 LIFE Act application.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted utility receipts, tax documents, payroll check stubs, United States Postal Service receipts, court records, rent receipts, and a Social Security Administration printout of earnings. However, the applicant failed to provide any evidence to demonstrate that he was either residing or physically present in the United States from May 1, 1987 through to May 4, 1988. Further, the Social Security Administration printout of earnings reflects that the applicant had earnings subject to Social Security taxes from 1970 to through 1987 and then again from 1989 to 1991, but that he made no earnings subject to Social Security taxes in 1988.

While the applicant also submitted evidence to demonstrate his residence and presence in this country in 1989, such evidence is not relevant as it relates to that period subsequent to the termination of the requisite period on May 4, 1988. Nevertheless, it must be noted that the applicant submitted a photocopy of a payroll check numbered [REDACTED] from [REDACTED] of Chicago made payable to him in the amount of \$325.00 and dated August 14, 1989. This payroll check bears the following numbers printed at the bottom of the document: [REDACTED] and [REDACTED]

In the notice of intent to deny issued on July 2, 2004, the district director questioned the veracity of the applicant's claimed residence in the United States for the requisite period. Specifically, the district director noted that applicant had failed to submit any evidence to demonstrate that he was continuously physically present in this country in 1988. The applicant was granted thirty days to respond.

In response, the applicant provided copies of previously submitted documents as well as a photocopy of a payroll check numbered [REDACTED] from [REDACTED] of Chicago made payable to him in the amount of \$325.00 and dated March 14, 1988. This payroll check bears the following numbers printed at the bottom of the document: [REDACTED] and [REDACTED]

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his continuous physical presence in the United States in an unlawful status for the entire period from November 6, 1986 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on August 27, 2004.

On appeal, the applicant declared that he was unsuccessful in his attempts to obtain further documentation to establish his continuous physical presence in the United States for the year 1988. The applicant pointed out that with his response to the notice of intent to deny he had included the photocopy of the payroll check numbered [REDACTED] from [REDACTED] of Chicago and dated March 14, 1988. However, upon examination it is clearly evident that the photocopied payroll check dated March 14, 1988 is merely an altered copy of the previously discussed payroll check dated August 19, 1989 that was provided with the Form I-485 LIFE Act application. With the exception of the different dates, both photocopied payroll checks are numbered [REDACTED] are issued by [REDACTED], of Chicago, are made payable to the applicant in the amount of \$325.00, and contain the following numbers printed at the bottom of the document: [REDACTED] and [REDACTED]

The fact the applicant provided an altered copy of a previously submitted payroll check establishes that he utilized this document in a fraudulent manner and made material misrepresentations in an attempt to establish his continuous physical presence in the United States for the requisite period.

Section 212(a)(6)(C) of 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.

By engaging in such action, the applicant has negated his own credibility as well as the credibility of his claim of continuous physical presence in this country for the period from November 6, 1986 to May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

The AAO issued a notice to both the applicant and counsel on June 7, 2007 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he utilized the altered payroll check cited above in a fraudulent manner and made material

misrepresentations in an attempt to establish his physical presence within the United States for the requisite period. The AAO further informed both parties that the applicant was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result of his actions. The parties were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision neither the applicant nor counsel has submitted a statement, brief, or evidence addressing the adverse information cited above.

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 petition. 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 existence of derogatory information that establishes the applicant used an altered copy of a previously submitted payroll check in a fraudulent manner and made material misrepresentations all seriously undermine the credibility of the applicant's claim of continuous physical presence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he was continuously physically present in the United States from November 6, 1986 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon an altered document that is not credible and has no probative value, it is concluded that he has failed to establish continuous physical presence in an unlawful status in the United States from November 6, 1986 through May 4, 1988 as required under section 1104(c)(2)(C) of the LIFE Act and 8 C.F.R. § 245a.11(c). The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

In addition, the fact that the applicant utilized a document in a fraudulent manner and made material misrepresentations in an attempt to establish his continuous physical presence in the United States for the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant is ineligible to adjust to temporary residence under section 1104 of the LIFE Act on this basis as well.

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 [or other office] 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).

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 and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

As previously discussed, the applicant initially failed to provide any evidence to demonstrate that he was residing in the United States in that period from May 1, 1987 through to May 4, 1988. While the applicant subsequently provided a photocopied payroll check in an attempt to establish his residence and presence in this country for this period, it has been determined that this document is an altered copy of a previously submitted document.

As the applicant has failed to credibly establish that he continuously resided in an unlawful status in the United States for the entire period from prior to January 1, 1982 to May 4, 1988 as required by both section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b), he is ineligible for permanent residence under the provisions of the LIFE Act on this basis as well.

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