

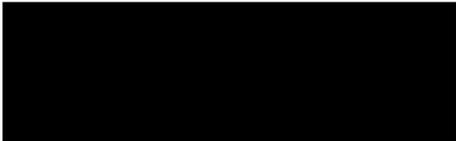


U.S. Citizenship
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FILE: [REDACTED] MSC 06 213 10072

Office: New York

Date: SEP 05 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed with a finding of inadmissibility.

The district director denied the application because the applicant failed to demonstrate that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant claims that the evidence submitted is consistent and establishes his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988.

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 record reflects that the applicant made a claim to class membership in a legalization class-action lawsuit and as such, were permitted to previously file Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), dated May 10, 1991. The applicant subsequently filed a Form I-485 LIFE Act application on December 3, 2001.

In connection with the Form I-687, the applicant submitted one postmarked envelope and a photocopy of a second postmarked envelope, addressed to him at his purported residence in New York, New York. These envelopes were purportedly mailed to the applicant from The Republic of Niger, bear Republic of Niger postage stamps, and contain postmarks dated December 10, 1982, and January 31, 1983 respectively. A review of the 2006 Scott Standard postage Stamp Catalogue Volume 4 (Scott Publishing Company 2005), reveals the following regarding the Niger postage stamps affixed to the postmarked envelopes:

- The photocopy of the envelope postmarked December 10, 1982 bears a postage stamp with a value of 150 francs that contains the picture of Auguste Lumiere. This stamp is listed at page 1299 of Volume 4 of the 2006 Scott Standard Postage Stamp Catalogue and is listed as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 21, 1989. The envelope also bears a postage stamp with a value of 25 francs that contains the picture of [REDACTED]. This stamp is listed at page 1302 of Volume 4 of the 2006 Scott Standard Postage Stamp Catalogue and is listed as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue in 1996.

- The envelope postmarked January 1, 1983 bears a postage stamp with a value of 150 francs that contains the picture of Auguste Lumiere. This stamp is listed at page 1299 of Volume 4 of the 2006 Scott Standard Postage Stamp Catalogue and is listed as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 21, 1989. The envelope also bears a postage stamp with a value of 25 francs that contains the picture of Coracias Abyssinica. This stamp is listed at page 1302 of Volume 4 of the 2006 Scott Standard Postage Stamp Catalogue and is listed as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue in 1996.

The fact that the envelopes postmarked December 10, 1982 and January 31, 1983 bear stamps first issued beginning in 1989 and 1996 tends to establish that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. By engaging in such an action, the applicant has seriously diminished his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

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).

In response to a Notice of Intent to Deny and Make a Finding of Fraud dated July 26, 2007, the applicant stated that he believed the "stamps were first issued in the very early 1980's." The applicant asserted that he did not "need to distort the facts or to commit fraud in order to prove . . . eligibility under the provisions of the law." However, the applicant failed to provide independent and objective evidence to overcome, fully and persuasively, the above findings.

The above derogatory information indicates that the applicant has misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for this visa classification. Consequently, it is concluded that the applicant 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. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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

By filing the instant application and submitting the fraudulent evidence described above, 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 the postmarked envelopes were falsifications, we affirm our finding of fraud. In addition, 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 the applicant’s attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the 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 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.