



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 01 348 60283

Office: Chicago

Date:

FEB 28 2008

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel contends that the applicant had submitted sufficient evidence to support his claim of 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 and 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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. *See* 8 C.F.R. § 245a.12(e).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and 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 Act on April 13, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed "[REDACTED]" in Chicago, Illinois from March 1981 to April 13, 1990, the date the Form I-687 application was submitted. Furthermore, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed employment with Orbit-Atomic Submarine on South Cottage Grove in Chicago, Illinois doing odd jobs on a part-time basis from December 1986 to December 1988 and Classic Submarine on [REDACTED] in Chicago, Illinois as a cook from December 1988 to April 13, 1990, the date the Form I-687 application was submitted.

In support of his claim of residence in this country for the requisite period, the applicant submitted an original envelope with an obscured postmark that contained a letter dated July 15, 1981. The applicant included another separate original envelope with an obscured postmark that contained a letter dated November 20, 1981. The envelopes and letters were purportedly mailed to the applicant from Pakistan at the address he claimed to have resided during the requisite period.

The applicant provided an employment affidavit dated March 30, 1990 that contained the letterhead of Orbit, Atomic and Kashmir Submarine on South Cottage Grove in Chicago, Illinois. The employment affidavit is signed by [REDACTED] who listed his position as owner of this business. Mr. [REDACTED] declared that the applicant is currently employed by this enterprise as a full-time worker. However, [REDACTED] failed to make any reference as to whether the applicant had worked for this establishment from December 1986 to December 1988 as the applicant had claimed at part #36 of the Form I-687 application. In addition, [REDACTED]'s testimony that the applicant was an employee of this enterprise as of March 30, 1990 conflicted with the applicant's

testimony at part #36 of the Form I-687 application that he was working as a full-time cook at Classic Submarine on [REDACTED] in Chicago, Illinois from December 1988 to at least April 13, 1990, the date the Form I-687 application was submitted. More importantly, [REDACTED] failed to provide either a description of the applicant's duties or the applicant's address of residence during his employment with Orbit, Atomic and Kashmir Submarine as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted another separate affidavit that is signed by [REDACTED] and dated April 12, 1990. Mr. [REDACTED] stated that he had known the applicant since 1981 and had personal knowledge that the applicant departed the United States in June 1987 to visit his family in Pakistan. [REDACTED] noted that the applicant returned to this country in July 1987. While Mr. [REDACTED] testified to the applicant's purported absence from this country in 1987, he failed to provide any specific, detailed, and verifiable testimony to substantiate the applicant's claim of residence in this country since prior to January 1, 1982.

The applicant included an affidavit that is signed by [REDACTED]. Mr. [REDACTED] indicated that he was the landlord of property located at [REDACTED] in Chicago, Illinois and that the applicant had resided at this address as his tenant since March 1, 1981. Nevertheless, Mr. [REDACTED] failed to provide any documentation such as a lease agreement or rent receipts that would tend to corroborate the claim that he was the landlord and the applicant his tenant at this address during the period in question.

Subsequently, on September 13, 2001, the applicant submitted his Form I-485 LIFE Act application. In support of his claim of residence in this country for the requisite period, the applicant included two new affidavits signed by Mohammed Shafiq both of which are dated July 31, 2001. In the first of these new affidavits, [REDACTED] stated that he had known the applicant since 1980. However, [REDACTED]'s testimony that he had known the applicant since 1980 contradicted his prior attestation in his affidavit dated April 12, 1990 that he had known the applicant since 1981.

The second new affidavit signed by [REDACTED] contained the letterhead of Sonic Submarine at [REDACTED] in Chicago, Illinois. Mr. [REDACTED] indicated that he was the owner of this enterprise and the applicant worked for Sonic Submarine as a cook/helper from January 1982 to March 1984. Regardless, it must be noted that the applicant failed to list any employment with Sonic Submarine during the requisite period at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry. Further, Mr. [REDACTED] failed to provide the applicant's address of residence during his employment with Sonic Submarine as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided an affidavit signed by [REDACTED] who declared that he had known the applicant since 1982. Mr. [REDACTED] noted that the applicant occasionally helped him perform maintenance in his building located at [REDACTED] in Chicago, Illinois. Although Mr. [REDACTED] claimed to know the applicant since 1982, he failed to provide any detailed and

verifiable information to substantiate the applicant's residence in this country for the requisite period. Additionally, [REDACTED] failed to attest to the applicant's residence in the United States prior to January 1, 1982.

The applicant submitted a photocopied receipt from HEBA Electronics Inc., in Chicago, Illinois that was dated July 25, 1985. The receipt listed the applicant as the purchaser of a single item for an unspecified amount and included the address he listed as his residence in the United States for the requisite period.

The applicant provided a photocopied receipt from the Chicago Picture Frame Co., in Chicago, Illinois that was dated May 10, 1982. The receipt listed the applicant as the purchaser of a single item for \$32.40 and included that address he claimed as his residence in this country for the period in question.

On May 24, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, counsel submitted a statement in which he declared that the applicant had submitted sufficient evidence to support his claim of residence in this country for the requisite period.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on July 8, 2004.

On appeal, counsel contended that the applicant had submitted sufficient evidence to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel indicated that the applicant was unable to obtain further documentation in support of such claim because of the significant passage of time and his status as an undocumented alien during the requisite period. Although counsel criticized the district director for failing to specify deficiencies and inconsistencies in the applicant's evidence of residence, any perceived lack of analysis by the district director must be considered harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f). While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period that occurred some twenty or more years ago, the mere passage of time and the applicant's undocumented status are insufficient to explain the fact that the evidence in the record lacks sufficiently detailed and verifiable information and in some cases contradictory and conflicting testimony relating to critical elements of the applicant's claim of residence in the United States for the requisite period.

As noted previously, the record contains two original envelopes addressed to the applicant at the address he claimed to reside in Chicago, Illinois at part #33 of the Form I-687 application. These envelopes were purportedly mailed to the applicant from Pakistan, bore Pakistani postage stamps, and contained letters dated July 15, 1981 and November 20, 1981, respectively. A review of the *2007 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2006), reveals the following regarding one of the Pakistani postage stamps affixed to the envelope containing the letter dated July 15, 1981:

- This envelope bears a postage stamp with a value of 50 paises that contains a stylized illustration of the Hyderabad Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* as catalogue number 617 A289. The catalogue lists this stamp's date of issue as 1986.

A review of the *2007 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2006), reveals the following regarding two of the Pakistani postage stamps affixed to the envelope containing the letter dated November 20, 1981:

- The envelope bears a Pakistani postage stamp with a value of 5 paises that contains a stylized illustration of the Kot Diji Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* as catalogue number 613 A289. The catalogue lists this stamp's date of issue as November 1, 1984. The letter bears a Pakistani postage stamp with a value of 60 paises that contains a stylized illustration of the Lahore Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* as catalogue number 618 A289. The catalogue lists this stamp's date of issue as 1984.

The fact that envelopes and letters that the applicant represented as being mailed to him on various dates in 1981 all bear Pakistani postage stamps that were not issued until well after the date these envelopes and letters were purportedly mailed establishes that he 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.

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 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.

The AAO issued a notice to both the applicant and counsel on January 30, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that the applicant utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. Counsel and the applicant were granted fifteen days to provide objective evidence to overcome, fully and persuasively, these findings. Although the notice initially mailed to the applicant was returned by the United States Postal Service as undeliverable, the notice was subsequently remailed to the applicant at his most current address of record on February 14, 2008. However, as of the date of this decision neither the applicant nor counsel has submitted a statement, brief, or evidence addressing the adverse information relating to the applicant's claim of residence in the United States since prior to January 1, 1982.

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 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 (BIA 1988).

The absence of sufficiently detailed supporting documentation, the contradictory nature of testimony contained in the record, and the existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations all seriously undermine the credibility of the applicant's claim of residence 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 or she has resided in the United States since prior to January 1, 1982 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.

Given the applicant's reliance upon documents with minimal or no probative value, 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. 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 is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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