



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 03 017 60827

Office: Chicago

Date: JUL 18 2008

IN RE: Applicant:

[REDACTED]

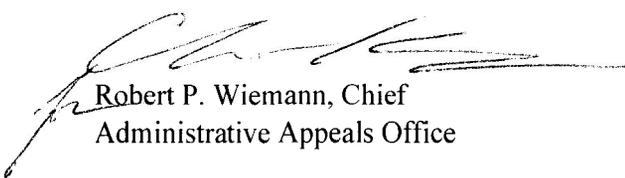
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


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 not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel reiterated the applicant's claim of residence in this country since 1981. Counsel submitted documentation in support of the appeal.

An applicant for permanent resident status under section 1104 of the LIFE Act 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).

The applicant 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. 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during 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 information contained in the attestation.

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.* At 80. 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. *Id.*

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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on May 30, 1991. 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 Gardena, California from August 12, 1981 to September 20, 1985; [REDACTED] in Wheeling, Illinois from September 24, 1985 to October 18, 1985; and [REDACTED] in Wheeling, Illinois from October 19, 1985 to January 24, 1989. Further, at part #34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, et cetera, the applicant listed an association with Saint Joseph the Worker Church at [REDACTED] in Wheeling, Illinois from December 1988 through the date the Form I-687 application was filed on May 30, 1991. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that he was supported by his brother [REDACTED] from August 12, 1981 to May 30, 1983; was an assistant at Pacific Nursery Farm in Gardena, California from June 9, 1983 to September 20, 1985, and worked as a dishwasher at [REDACTED] Restaurant in Deerfield, Illinois from October 5, 1985 to December 20, 1988.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted five original postmarked envelopes. Two of the five envelopes were mailed to the applicant at an address where he claimed to have resided after the termination of the requisite period on May 4, 1988, and therefore, cannot be considered as probative of his claimed residence in the United States from prior to January 1, 1982 to May 4, 1988. The remaining three envelopes were purportedly mailed from Mexico to the applicant at the address, [REDACTED], in Wheeling, Illinois, that the applicant claimed to have resided from September 24, 1985 to October 18, 1985 at part #33 of the Form I-687 application. While the postmarks on these three envelopes are not completely legible, the envelopes do contain Mexican postage stamps.

The applicant provided an affidavit that is signed by [REDACTED]. Mr. [REDACTED] stated that he was the applicant's brother and had personal knowledge that the applicant arrived in this country on August 12, 1981 at sixteen years of age. Mr. [REDACTED] indicated that the applicant lived with him and his family at [REDACTED] in Gardena, California from August 12, 1981 to September 20, 1985 and that he provided the applicant with food and some economic support during that period. Mr. [REDACTED] noted that the applicant had worked with him as a helper at Pacific Nursery Farm in Gardena, California from June 1983 to September 20, 1985 and that the applicant had been paid in cash during this employment. Mr. [REDACTED] testified that the applicant moved to Chicago, Illinois on September 20, 1985 and that he had lived in Chicago since such date through the date the affidavit was executed on November 28, 1990. Although [REDACTED] attested to the general locale of the applicant's residence after September 20, 1985, he failed to provide any specific and verifiable testimony to substantiate the applicant's residence in this country after this date through the end of the requisite period on May 4, 1988.

The applicant included an affidavit signed by [REDACTED] who acknowledged that the applicant was her brother. Ms. [REDACTED] declared that the applicant was the tenant of her and her husband, [REDACTED] at [REDACTED] in Wheeling, Illinois from October 1985 to January 24, 1989. Nevertheless, Ms. [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up to October 1985.

The applicant submitted an affidavit that is signed by [REDACTED]. Ms. [REDACTED] stated that the applicant was her brother and that she had known him since his birth in 1964. Ms. [REDACTED] indicated that she had personal knowledge the applicant had continuously resided in the United States since 1964 except for a single absence from this country from June 19, 1987 to July 20, 1987. However, Ms. [REDACTED]'s testimony that the applicant resided in the United States since 1964 conflicted with the applicant's testimony at part #33 of the Form I-687 application where he claimed that he began residing in this country on August 12, 1981.

The testimony contained in the affidavits of [REDACTED] and [REDACTED] establishes that the applicant is the brother of these three affiants. Consequently, the probative value of the testimony of these three affiants is limited in that they have acknowledged

that they are members of the applicant's immediate family who must be viewed as having an interest in the outcome of these proceedings, rather than independent and disinterested third parties.

The applicant provided an affidavit dated February 22, 1991 containing the letterhead of Sassi Restaurant at 700 N. River Road in Mount Prospect, Illinois that is signed by [REDACTED] who indicated that he was the owner of this establishment. Mr. [REDACTED] noted that he worked with the applicant at Ermando Restaurant at 485 Lake Cook Place in Deerfield, Illinois from October 5, 1985 to December 20, 1988. Mr. [REDACTED] stated that the applicant worked as a dishwasher during that period that they worked together at Ermando Restaurant. However, Mr. [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up to October 5, 1985.

Subsequently, on October 17, 2002, the applicant filed his Form I-485 LIFE Act application. The applicant included new documentation in support of his claim of residence in the United States for the requisite period with the Form I-485 LIFE Act application.

The applicant submitted a letter dated May 20, 2002 on the letterhead stationery of Saint Joseph the Worker Catholic Church in Wheeling, Illinois that is signed by Reverend [REDACTED] who listed his position as pastor. In his letter, Father [REDACTED] provided the applicant's most current address of residence as of the date the letter was executed and stated that the applicant had resided in the United States since August 12, 1981 when he began living in Gardena, California. Father [REDACTED] noted that the applicant had been attending Saint Joseph the Worker Catholic Church since 1985 and had been a parish worker and catechist at the church for many years. However, Father [REDACTED]'s assertion that the applicant had attended this church since 1985 conflicted with the applicant's testimony at part #34 of the Form I-687 application that he began his association with the church in December 1988. In addition, Father [REDACTED] failed to list the applicant's addresses of residence during that period he had been affiliated with the church beginning in 1985 as required by 8 C.F.R. § 245a.2(d)(3)(v). Moreover, Father [REDACTED] failed to disclose the source of his knowledge regarding the applicant's purported residence in this country from August 12, 1981 through that date the applicant allegedly began attending Saint Joseph the Worker Catholic Church in Wheeling, Illinois in 1985.

The applicant provided an affidavit dated June 15, 2002 on the letterhead stationery of Chicago Bagel and Bialy II at 260 S. Milwaukee Avenue in Wheeling, Illinois that is signed by [REDACTED] who listed her position as owner of this enterprise. Ms. [REDACTED] provided the applicant's most current address of residence as of the date the affidavit was executed and stated that the applicant had worked for her part-time in the evenings cleaning her store from 1985 to 1998. While Ms. [REDACTED] testified that the applicant had been her employee since 1985, the applicant failed to list any employment for Ms. [REDACTED] at this enterprise at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since entry. No explanation was advanced as to why the applicant failed to list his employment with Ms. [REDACTED] if in fact he had been her employee at Chicago Bagel and Bialy II since 1985.

The applicant included an affidavit dated June 8, 2002 on the letterhead stationery of Rossini's Restaurant at 8808 Milwaukee Avenue in Niles, Illinois that is signed by [REDACTED]. This is the same individual who had previously provided a separate affidavit relating to the applicant's employment history. Mr. [REDACTED] reiterated his prior testimony that he worked with the applicant at Ermando Restaurant at 485 Lake Cook Place in Deerfield, Illinois from October 1985 to December 1988. Mr. [REDACTED] stated that the applicant worked as a dishwasher during that period that they worked together at Ermando Restaurant. However, Mr. [REDACTED] again failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up to October 5, 1985.

The applicant submitted a new affidavit signed by his brother [REDACTED] who had previously provided another separate affidavit in support of the applicant's claim of residence since prior to January 1, 1982. Mr. [REDACTED] indicated that two of his brothers, the applicant and [REDACTED], arrived in the United States in August 1981 and began living with him. Mr. [REDACTED] stated that his brothers, the applicant and [REDACTED], did not attend school or work but were provided with economic support for taking care of his children. Mr. [REDACTED] noted that he was a supervisor for Pacific Nursery in Gardena, California and that his brothers, the applicant and [REDACTED], watered plants and cleaned at this establishment from June 1983 through at least 1985 when the applicant moved to Chicago, Illinois. Mr. [REDACTED] declared that the applicant continued to live in Chicago except in June and July of 1987 when his brothers, the applicant and [REDACTED] traveled to Mexico to visit their mother. While Mr. [REDACTED] attested to the general locale of the applicant's residence after September 20, 1985, he once again failed to provide any specific and verifiable testimony to corroborate the applicant's residence in this country after this date through the end of the requisite period on May 4, 1988.

The record shows that the applicant also included documentation, specifically tax returns, photographs, a California Driver License, an employment letter, receipts, and utility bills, which tends to establish that his brother, [REDACTED], resided in the United States since prior to January 1, 1982. However, the probative value of these documents is minimal as it relates to the applicant's claim of continuous residence in this country for the requisite period because such documentation does not contain any information pertaining to the applicant.

On December 8, 2003, the district director issued a notice of intent to deny to the application for failure to submit sufficient evidence of continuous unlawful residence in the United States from prior to 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 asserted that it was difficult for the applicant to obtain additional documentation in support of his claim of residence because he was an undocumented alien who was very young and did not attend school when he first arrived in this country.

The district director determined that the applicant failed to submit sufficient credible 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 30, 2004.

On appeal, counsel reiterated the applicant's claim of residence in this country for the requisite period and indicated that he submitted sufficient evidence to support such claim. However, the supporting documents contained in the record lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the entire requisite period. In addition, the majority of affidavits submitted in support of the applicant's claim of residence for the period in question have been provided by the applicant's siblings rather than independent disinterested witnesses.

As previously discussed, the applicant submitted original postmarked envelopes with the Form I-687 application that was filed on May 30, 1991. Three of these envelopes were purportedly mailed from Mexico to the applicant at an address, [REDACTED] in Wheeling, Illinois, where the applicant claimed to have resided from September 24, 1985 to October 18, 1985. Although the postmarks on these three envelopes are not completely legible, the envelopes do contain Mexican postage stamps. A review of the *2006 Scott Standard Postage Stamp Catalogue Volume 4* (Scott Publishing Company 2005) reveals the following:

- Two of the three envelopes contain the same two Mexican stamps. One of these two stamps has a value of five hundred pesos and contains an illustration of petroleum valves, the Spanish words for petroleum valves "valvulas petroleras," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 801 of Volume 4 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1496 A320. The catalogue lists this stamp's date of issue as 1988. The other stamp on these two envelopes has a value of one thousand pesos and contains an illustration of a disk plow, the Spanish words for agricultural machinery "maquinaria agricola," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 801 of Volume 4 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1501 A320. The catalogue lists this stamp's date of issue as 1988.
- The remaining envelope contains a single Mexican stamp with a value of seven hundred and fifty pesos. This stamp contains an illustration of movie film, the Spanish word for cinema "cine," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 803 of Volume 4 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1586. The catalogue lists this stamp's date of issue as 1990.

The fact that three envelopes purportedly mailed to the applicant at the address he claimed to have resided in the United States in 1985 all bear stamps that were not issued until well after such date establishes that the applicant utilized these 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 seriously undermined his 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). The above derogatory information indicates that the applicant made material misrepresentations in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to permanent residence under the provisions of the LIFE Act.

The AAO issued a notice to the applicant and counsel on May 23, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he 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. The applicant and counsel were granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, counsel claims that the envelopes cited above were mailed to the applicant at that address after he had purportedly moved. However, neither the applicant nor counsel provides any evidence to substantiate such claim. Without independent evidence to corroborate counsel's contention, the explanation advanced in the response cannot be considered as persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel includes an original handwritten receipt dated December 20, 1981 that appears to represent the applicant's payment of \$45.00 to [REDACTED]. The receipt lists the name of the applicant's brother, [REDACTED], and the address where the applicant purportedly lived with this brother from August 12, 1981 to September 2, 1985: [REDACTED] in Gardena, California. However, neither the applicant nor counsel offers any explanation as to why this original receipt was submitted only after the applicant had been confronted with the

derogatory information cited above rather than some earlier point in this proceeding if in fact he had been in possession of this receipt since at least December 20, 1981 and the only other contemporaneous and original supporting documentation contained in the record had been included with the Form I-687 application that was filed on May 30, 1991. As stated 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 application. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations seriously undermines 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.2(d)(5), 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 has resided in the United States for the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

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.