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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

LR

FILE:

Office: NEW YORK

Date: OCT 29 2008

MSC 01 307 60397

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:

SELF-REPRESENTED

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.

A handwritten signature in dark ink, appearing to read "Robert P. Wiemann".

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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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, the applicant reiterated his claim of residence in the United States for the requisite period and indicated that he has submitted sufficient evidence in support of such claim. The applicant contended that he did not possess any additional contemporaneous documents reflecting his residence in this country for the period in question because he was an undocumented alien at that time. The applicant submitted documentation in support of his appeal.

Although a Notice of Entry of Appearance as Attorney of Representative (Form G-28) has been submitted, the individual who provided this document is no longer authorized under 8 C.F.R. §§ 292.1 or 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

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 “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 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). At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since their first entry, the applicant listed [REDACTED], Brooklyn, New York from March 1981 to October 1983, [REDACTED], Brooklyn, New York from November 1983 to December 1984, [REDACTED], Brooklyn, New York from January 1985 to June 1987, 1814 [REDACTED], Brooklyn, New York from July 1987 to April 1988, and [REDACTED], Brooklyn, New York from May 1988 to July 1989.

Subsequently, on August 3, 2001, the applicant filed his Form I-485 LIFE Act application.

In support of his claim of residence in the United States for the requisite period, the applicant submitted two employment affidavits, four affidavits of residence, and nine photocopied envelopes.

On September 25, 2007, the director issued a notice of intent to deny the application to the applicant for failure to submit sufficient credible evidence of his 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, the applicant submitted a statement in which he asserted that the affidavits, employment letters, and photocopied envelopes he provided were sufficient evidence if his residence in the United States for the requisite period. The applicant included copies of previously submitted documentation as well as three new affidavit of residence with his response.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status during the period in question and, therefore, denied the Form I-485 LIFE Act application on January 25, 2008.

On appeal, the applicant asserted that the affidavits, letters, and photocopied envelopes he had submitted were sufficient to demonstrate his residence in this country since prior to January 1, 1982. The applicant contended that he did not possess any additional contemporaneous documents reflecting his residence in this country for the period in question because he was an undocumented alien at that time. The applicant submitted three original envelopes in support of his appeal.

During the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in this country from prior to January 1, 1982 to May 4, 1988. As noted above, the applicant submitted nine photocopied envelopes in support of his claim of residence in the United States for the requisite period. Three of these photocopied envelopes are postmarked the 9th day of an indeterminate month in 1981, July 17, 1982, and the 9th day of an indeterminate month in 1983, respectively. All three of these particular photocopied envelopes were purportedly mailed from Pakistan to the applicant at the address he claimed to have resided from March 1981 to October 1983 at part #33 of the Form I-687 application. One of the remaining photocopied envelopes contains an obscured postmark showing March 28 of an indeterminable year in the 1980's that is addressed to the applicant at that same address he claimed as his residence in the United States from November 1983 to December 1984 at part #33 of the Form I-687 application. Consequently, it is concluded that this envelope was mailed from Pakistan to the applicant at this particular address on or about March 28, 1984. Another one of the remaining photocopied envelopes is postmarked December 6, 1985 and was purportedly mailed from Pakistan to the applicant at the address he claimed to have resided as of the date of this postmark. The remaining four photocopied envelopes either contain an illegible postmark or do not contain a postmark at all. All of these photocopied envelopes contain Pakistani postage stamps. With the appeal, the applicant provided the original copies of the envelopes postmarked July 17, 1982, the 9th day of an indeterminate month in 1983, and December 6, 1985, respectively.

A review of the *2006 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2005), reveals the following regarding the Pakistani postage stamps affixed to the envelopes:

- The envelopes postmarked the 9th day of an indeterminate month in 1981, July 17, 1982, and the 9th day of an indeterminate month in 1983, all bear two of the same postage stamps each with a value of 50 paisas that contain a stylized illustration of the Hyderabad Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number 617 A289. The catalogue lists this stamp's date of issue as 1986.

The fact that envelopes postmarked the 9th day of an indeterminate month in 1981, July 17, 1982, and the 9th day of an indeterminate month in 1983, all bear the same Pakistani postage stamp that was not issued until 1986 establishes 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. This derogatory information establishes 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. By engaging in such an action, the applicant has negated his own credibility, the credibility of his claim of continuous residence in this country for the requisite period, and the credibility of all documentation submitted in support of such claim.

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 AAO issued a notice to the applicant on September 17, 2008 informing him that it was the AAO's intent to dismiss his 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 was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, the applicant requested an extension in order to obtain further documentation in support of his claim of residence in this country since prior to January 1, 1982. The applicant was provided with an additional fifteen day period to respond to the notice initially issued by the AAO on September 17, 2008. However, as of the date of this decision the applicant has failed to submit a statement, brief, or evidence addressing the fact that he utilized the three postmarked envelopes in the manner cited above.

The existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations negates 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 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.12(e) 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.