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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: GARDEN CITY Date: SEP 24 2008

MSC 01 345 60120

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, New York, New York, 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, the applicant reiterated his claim of residence in this country since July 5, 1981 and asserted that he had been absent from the United States on one occasion when he traveled to Canada to see a sick friend from August 12, 1987 to September 2, 1987. The applicant indicated that he did not possess any further evidence of his residence in the United States since 1981 because he had lost such documents with the significant passage of time.

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 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 October 20, 1992. 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], New York from July 1981 to September 1991. 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 the Muslim Community Center of Brooklyn, Inc., at [redacted] from 1982 through the date the Form I-687 application was filed on October 20, 1992. 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 employed as a daily worker for both Deluxe Home Improvements in Brooklyn, New York from July 1981 to August 1987 and Aziz Contracting Company in Brooklyn, New York from September 1987 through the date the Form I-687 application was filed.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted two original postmarked envelopes. However, one of these envelopes is postmarked with a date occurring 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 envelope is postmarked November 6, 1981, contains Bangladeshi postage stamps, and was purportedly mailed from Bangladesh to the applicant at the address he claimed to have resided on the date of the postmark.

The applicant provided an affidavit signed by [redacted] who stated that the applicant was a friend who had visited and stayed in his home in Montreal, Canada beginning August 12, 1987 to his return to the United States on September 2, 1987.

The applicant included an affidavit signed by [redacted] provided a detailed description of the route he and the applicant traveled from New York City through Buffalo to cross the border from Niagara Falls, New York into Canada through Toronto and finally dropping the applicant off in Montreal. [redacted] noted that he subsequently returned to New York after this trip and then drove back to Montreal on September 2, 1987 and traveled back to New York City by following the reverse of the same route of the original trip.

Although the affidavits of [redacted] contain information regarding the applicant's purported trip to Canada in 1987, neither affiant provided any direct and specific testimony relating to the applicant's residence in this country during the requisite period.

The applicant submitted a letter containing the letterhead of Church Avenue Pharmacy in Brooklyn, New York that is signed by [redacted] who listed his position as pharmacist. [redacted] declared he had known the applicant for many years as he was the family pharmacist. However, he failed to specify the date he first met the applicant and did not provide any relevant and verifiable information to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982.

The applicant submitted a letter dated April 7, 1992 that is typed on letterhead stationery and signed by [redacted] stated that he had known the applicant for over eight years because the applicant was his patient. However, the testimony of [redacted] is of limited probative value as it was not accompanied by any corresponding medical records. In addition, [redacted] failed to provide any specific and detailed testimony to substantiate the applicant's claim of residence in this country despite claiming to have known the applicant beginning as early as 1983, over eight years from the date of his letter. Moreover, [redacted] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up through that date he and the applicant first met in 1983.

The applicant submitted three separate affidavits that are signed by [redacted] and [redacted] respectively. All three affiants noted that they had personal knowledge that the

applicant resided at [redacted] New York from July 1981 through September 1991. However, none of the affiants specified their source of their personal knowledge regarding the applicant's residence, identified the nature of their relationship with the applicant, or specified the date and circumstances by which they first became acquainted with the applicant.

The applicant provided a letter dated May 8, 1992 containing the letterhead of the Muslim Community Center of Brooklyn, Inc., in Brooklyn, New York that is signed by [redacted] Chaudhry who listed his position as secretary. [redacted] declared that the applicant had been attending Friday congregations at the center since 1982 and he was active in social and community affairs. Nevertheless, [redacted] failed to provide any of the applicant's addresses of residence during the period that he was affiliated with the Muslim Community Center of Brooklyn, Inc., as required by 8 C.F.R. § 245a.2(d)(3)(v).

The applicant included a declaration containing the letterhead of the Aziz Contracting Company in Brooklyn, New York that is signed by [redacted] stated that the applicant had been employed as a daily worker [redacted] Contracting Company from September 6, 1987 through the date the declaration was executed on July 13, 1992. However, [redacted] failed to provide the applicant's addresses of residence during his period of employment, did not state the applicant's duties at this establishment, and failed to provide relevant information relating to the availability of business records, all of which are required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, Mr. [redacted] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 until September 6, 1987.

The applicant submitted an employment letter containing the letterhead of Deluxe Home Improvements in Brooklyn, New York that is signed by individual with an illegible signature. This individual noted that the applicant had been employed by this enterprise as a helper from July 25, 1981 to August 3, 1987. Nevertheless, this individual did not specify the applicant's duties at Deluxe Home Improvement, failed to provide relevant information relating to the availability of business records, and failed to state the applicant's address of residence during his period of employment, all of which are required by 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, the individual who drafted the letter did not provide any testimony relating to the applicant's residence in the United States after September 6, 1987 through May 4, 1988.

Subsequently, on September 10, 2001, the applicant filed his Form I-485 LIFE Act application. The applicant included new as well as previously submitted 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 provided an affidavit signed by [redacted] who declared that he had known the applicant since boyhood because both he and the applicant were born in the same neighborhood in Bangladesh. [redacted] noted that he and the applicant had remained in close touch since the applicant arrived in the United States in 1981 and that his wife's sister subsequently married the

applicant. However, [redacted] failed to provide any direct and specific testimony to substantiate the applicant's claim of residence in this country during the requisite period.

The applicant submitted a new declaration containing the letterhead of the Aziz Contracting Company in Brooklyn, New York that is signed by [redacted] the same individual who had previously provided a declaration in support of the applicant's claimed residence in this country for the period in question. [redacted] reiterated his prior testimony that the applicant had been employed as a daily worker by [redacted] Contracting Company from September 6, 1987 through the date this new declaration was executed on August 25, 2001. However, [redacted] once again failed to provide the applicant's addresses of residence during his period of employment, did not state the applicant's duties at this establishment, and failed to provide relevant information relating to the availability of business records, all of which are required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, [redacted] failed again to attest to the applicant's residence in the United States from prior to January 1, 1982 until September 6, 1987.

On July 29, 2007, the district director issued a notice of intent to deny the application to the applicant for failure to submit sufficient 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 repeated his claim that he began his continuous residence in this country on July 5, 1981 but for a subsequent absence from the United States when he traveled to Canada from August 12, 1987 to September 2, 1987. The applicant recounted how he had attempted to apply for legalization during the application period from May 5, 1987 to May 4, 1988, but was told that he was not eligible by a Service officer as a result of his short absence. The applicant asserted that the reason for his failure to produce additional evidence of his residence in the United States for the period in question was the result of the significant passage of time.

The applicant included affidavits that are signed by signed by [redacted] respectively. [redacted] declared that he had resided in the United States since 1979 and met the applicant for the first time at an unnamed mosque at [redacted] New York on an unspecified date. In his affidavit, [redacted] stated that he had been living in this country since 1980 and first met the applicant on an unspecified date on [redacted] in Brooklyn, [redacted] noted that they subsequently became friends with the applicant and exchanged visits at each of their respective homes. Nevertheless, the testimony of both [redacted] did not contain any specific and verifiable information to corroborate the applicant's claim of residence in this country since prior to January 1, 1982.

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 prior to January 1,

1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on September 4, 2007.

On appeal, the applicant reiterated his claim of residence in this country since 1981 and asserted that he had submitted sufficient documentation in support of such claim. The applicant again noted the difficulty in obtaining documentation in support of such claim in light of the significant passage of time. Nevertheless, the supporting documents contained in the record lack both specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the period in question.

As previously discussed, the applicant included an original envelope postmarked November 6, 1981 with the Form I-687 application filed on October 20, 1992. The envelope contains Bangladeshi postage stamps and was purportedly mailed from Bangladesh to the applicant at the address he claimed to have resided on the date of the postmark. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2005) reveals the following:

- The envelope bears a postage stamp with a value of fifty paisas that depicts a Mobile Post Office. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Postage Stamp Catalogue* with catalogue number [redacted] The envelope also bears another postage stamp with a value of five takas that depicts the Khulna Post Office. This stamp is also listed at page 661of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* with catalogue number [redacted] The catalogue lists both of these stamps' date of issue as December 21, 1983.

The fact that an envelope postmarked November 6, 1981 bears stamps that were not issued until well after the date of this postmark establishes that the applicant utilized this document 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 undermined 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). 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 his attorney on July 15, 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 envelope 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, counsel submitted a statement in which he claims that he had telephoned the AAO and spoke to an unnamed lady on July 23, 2008. Counsel states that he requested that he be provided with a copy of the stamp that the AAO had relied upon to conclude that the applicant had utilized the envelope postmarked November 6, 1981 in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. Counsel contends that the fifteen day period granted to respond to the AAO's notice was not sufficient to allow for a valid rebuttal of the adverse information cited in the notice as the regulation at 8 C.F.R. § 103.2(b)(16)(i) did not contain a regulatory time limit to submit such a response as had been imposed by the AAO. Counsel requests that his statement be treated as a motion and that he be provided copies of any so-called derogatory evidence as deemed by the AAO as expeditiously as possible.

However, a review of the telephone log maintained at the AAO reveals no record of any telephone call from counsel or any other individual referencing the applicant's A-file number on or about July 23, 2008. Further, it must be noted that the adverse evidence relied upon by the AAO in determining the applicant had utilized a document in a fraudulent manner consisted of not one but two different Bangladeshi postage stamps as well as an original envelope postmarked November 6, 1981. The AAO relied upon an authoritative source, the *2006 Scott Standard Postage Stamp Catalogue,* to make this determination and provided the relevant volume and page references in informing both counsel and the applicant that the two stamps on this original envelope had been issued over two years after the date of the postmark. The entire regulation at 8 C.F.R. § 103.2(b)(16) that includes 8 C.F.R. § 103.2(b)(16)(i) states the following:

> Inspection of evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.
>
> > (i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

> (ii) Determination of statutory eligibility. A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.
>
> (iii) Discretionary determination. Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No [redacted] as requiring protection from unauthorized disclosure in the interest of national security.
>
> (iv) Classified information. An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. [redacted] as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

Clearly, the language of the regulation does not mandate that the Service or its successor CIS provide an applicant or petitioner with a copy of a document containing derogatory information used to deny an application or petition. Rather, the regulation requires that an applicant or petitioner be advised of such derogatory information and offered an opportunity to rebut the information and present information in his or her own behalf before the decision is rendered. This is the procedure that has been utilized in the instant case as the AAO issued notices dated July 15, 2008 to counsel and the applicant specifically informing the parties of the derogatory information relating to the original envelope postmarked November 6, 1981. The record shows that as of the date of this decision neither counsel nor the applicant has submitted a substantive response addressing the adverse information cited in the AAO's notice. Finally, counsel's request to treat his statement as a motion shall not be granted as the regulation at 8 C.F.R. § 245a.20(c) specifically states that, "Motions to reopen a proceeding or reconsider a decision shall not be considered under this Subpart B [8 C.F.R. §§ 245a.10 through 245a.22]."

The existence of derogatory information that establishes the applicant used a postmarked envelope 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.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.