



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: **MAY 29 2009**

MSC 01 345 62527

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was initially denied by the Director, New York, New York. The director subsequently reopened the matter and denied the application for permanent residence again. The matter 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 this country for the requisite period and asserted that he had submitted sufficient evidence in support of such claim. The applicant noted that the significant passage of time caused difficulty in obtaining further documentation in support of his claim of residence. The applicant submitted a Social Security Administration Earnings Statement and a New York State Department of Tax and Finance Certificate of Authority in support of his appeal.

An applicant for permanent resident status under 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; 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 Act, on February 28, 1991. Subsequently, the applicant filed his Form I-485 LIFE Act application on September 10, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, original receipts, photocopied receipts, an affidavit relating to the applicant’s absence from this country in 1987, an affidavit relating to the circumstances surrounding the procurement of the applicant’s Senegalese passport in 1987, and original envelopes postmarked December 6, 1981, August 3, 1982, and September 4, 1987, respectively.

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 19, 2008.

The applicant’s remarks on appeal relating to the sufficiency of the evidence he submitted in support of his claim of continuous residence are noted. However, 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 has been previously discussed, the applicant submitted original envelopes postmarked December 6, 1981, August 3, 1982, and September 4, 1987, in support of his claim of residence in this country for the requisite period. These envelopes contain Senegalese postage stamps and were represented as having been mailed from Senegal to the applicant at the address in this country he claimed as his sole residence during the entire requisite period. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked December 6, 1981 bears a stamp with a value of seventy francs that commemorates the Ferlo Nature Reserve. The stamp contains a stylized illustration of two hands framing an ostrich. This stamp is listed at page 1056 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number [REDACTED]. The catalog lists this stamp's date of issue as February 5, 1987. This envelope also bears another stamp with a value of one hundred forty five francs that commemorates the industries of Senegal. The stamp contains a stylized illustration of the Sieb Mill in Diourbel, Senegal. This stamp is listed at page 1058 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number [REDACTED]. The catalog lists this stamp's date of issue as November 7, 1988.
- The envelope postmarked August 3, 1982 bears a stamp with a value of fifteen francs that commemorates the pottery of Senegal. The stamp contains a stylized illustration of a two handled vase bearing the painting of a face. This stamp is listed at page 1058 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number [REDACTED]. The catalog lists this stamp's date of issue as November 1, 1989. This envelope also bears another stamp with a value of twenty five francs that commemorates the thirtieth anniversary (in 1989) of the Conference of Postal and Telecommunications Administrations of West African Nations (CAPTEO) in Dakar, Senegal. The stamp contains a stylized illustration of the number thirty with the zero represented by a satellite dish, over a postmarked envelope. This stamp is listed at page 1058 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalog lists this stamp's date of issue as October 9, 1989.
- The envelope postmarked September 4, 1987 bears a stamp with a value of twenty five francs that commemorates PHILEXFRANCE '89, a philatelic exhibition held in France from July 7, 1989 to July 17, 1989. The stamp contains a stylized illustration of a simulated stamp imposed over a map of France colored in blue, white, and red. This stamp is listed at page 1058 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number [REDACTED]. The catalog lists this stamp's date of issue as July 7, 1989.

The fact that envelopes postmarked December 6, 1981, August 3, 1982, and September 4, 1987 all bear stamps that were not issued until well after the date of this postmark 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 March 18, 2009 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.

The record shows that as of the date of this decision, the applicant has failed to respond to the AAO's notice. Therefore, the record must be considered complete.

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.

A finding of fraud is entered into the record, and the matter will be referred to the United States Attorney for possible prosecution as provided in 8 C.F.R. § 245a.21(c).

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