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U.S. Citizenship  
and Immigration  
Services

L2

[Redacted]

FILE:

[Redacted]

Office: Los Angeles

Date: JUN 07 2007

MSC 02 137 61754

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, Los Angeles, California, 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 including contemporaneous documents to support his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of previously submitted documents in support of the appeal.

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 "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 file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (Act), on or about September 27, 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 Azusa, California from June 1980 to October 1982, "[redacted]" in Los Angeles, California from October 1982 to March 1988, and "[redacted]" in North Hollywood, California from March 1988 to September 22, 1990, the date the Form I-687 was executed. Further, 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 indicated that he worked for [redacted] as a gardener and other miscellaneous duties in Azusa, California from June 1980 to October 1982 and as a self-employed mobile car washer working out of his home from October 1982 up until the date the Form I-687 application was executed on September 22, 1990.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted a receipt dated July 14, 1981 in his name from the office of optometrists [redacted] and [redacted] in Glendale, California. This receipt contains the pre-printed notation "No. [redacted]" in the bottom left corner. However, the probative value of this receipt is limited in that the applicant's name and the date were both handwritten. In addition, it appears as if both the 8 and 1 in the year 1981 have been overwritten.

The applicant included an affidavit that is signed by [redacted]. [redacted] stated that he had cohabitated with the applicant at "[redacted]," in Azusa, California from June 1980 to October 1982. However, [redacted] failed to provide any testimony relating to the applicant's residence in this country after October 1982.

The applicant provided an affidavit that is signed by [redacted] who noted that he cohabitated with the applicant at "[redacted]," in Los Angeles, California from October 1982 to March 1988. However, [redacted] failed to provide any testimony relating to the applicant's residence in the United States in those periods from prior to January 1, 1982 to September 30, 1982 and after March 1988 to May 4, 1988.

The applicant submitted an employment affidavit dated August 6, 1990 that is signed by [redacted]. [redacted] declared that the applicant "...did gardening for me from January 1983

to approximately June 1984.” However, it must be noted that the applicant failed to list [REDACTED] as an employer 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 failed to provide any explanation as to why [REDACTED] was not included in his listing of employers at part #36 of the Form I-687 application.

The applicant included a letter containing the letterhead of [REDACTED], in Burbank, California that is dated October 19, 1993 and is signed [REDACTED] the same individual who provided the employment affidavit discussed in the previous paragraph. [REDACTED] attested to the applicant’s good character and stated that he had known the applicant since 1982. While [REDACTED] attested to the applicant’s residence in this country since 1982, he failed to provide any specific, detailed, and verifiable testimony, such as the applicant’s address(es) of residence in this country, to corroborate the applicant’s claim of residence in the United States since such date. In addition, [REDACTED] failed to provide any testimony that the applicant resided in the United States prior to January 1, 1982.

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] noted that he had given the applicant a ride to San Diego, California on December 20, 1987 so that the applicant could return to Mexico and visit his family for the Christmas holiday. [REDACTED] declared that he subsequently picked the applicant up in San Diego, California on January 9, 1988 upon the applicant’s return from Mexico. However, [REDACTED] failed to provide any direct, verifiable, and specific testimony relating to the applicant’s residence in the United States for the requisite period.

Subsequently, on February 14, 2002, the applicant filed his Form I-485 LIFE Act application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS). In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted a photocopy of a receipt dated September 5, 1984 in his name from the office of optometrists [REDACTED] and [REDACTED] in Glendale, California. This receipt contains the pre-printed notation “No. [REDACTED]” in the bottom left corner. However, the probative value of this receipt is limited in that the applicant’s name and the date were both handwritten. As previously discussed, the applicant included an original receipt from this same office with his Form I-687 application. The original receipt is dated July 14, 1981 and contains the pre-printed notation “No. [REDACTED]” in the bottom left corner while the photocopied receipt is dated September 5, 1984 and contains the pre-printed notation “No. [REDACTED]” in the bottom left corner. The fact that the photocopied receipt is dated more than three years after the original receipt but contains a lower receipt number than the original tends to diminish the credibility of both of these documents.

The applicant included a receipt dated April 20, 1988 in his name from the California Department of Motor Vehicles. The receipt listed the applicant’s address as [REDACTED] in Glendale, California. While this receipt is a contemporaneous document that tends to corroborate the applicant’s claim of residence in this country as of April 20, 1988 and thereafter, it must be

noted that he failed to include the address on the receipt as an address of residence at part #33 of the Form I-687 application.

On October 27, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Although the district director noted that the affidavits submitted in support of his claim of residence were not sufficient evidence to establish continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988, he failed to acknowledge that the applicant had also submitted contemporaneous documents in support of his claim. The applicant was granted thirty days to respond to the notice.

In response, counsel objected to the district director's failure to consider all the evidence provided by the applicant in support of his claim of continuous residence in this country for the requisite period. Counsel also noted that the notice of intent to deny lacked specificity in identifying the deficiencies in the applicant's evidence of residence. Counsel provided copies of previously submitted documentation, as well as four photocopied envelopes as evidence of the applicant's residence within the United States 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 January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-485 LIFE Act application on December 9, 2004.

On appeal, counsel again objected to both the district director's lack of specificity and failure to acknowledge all evidence provided by the applicant in the notice of intent to deny. Counsel's statements regarding the deficiencies of the notice of intent to deny have been considered. Nevertheless, any oversight or error made by the district director in assessing the applicant's evidence of residence in the United States from prior to January 1, 1982 has been rendered harmless by the fact that such evidence has been identified and thoroughly analyzed in this decision. Further, the affidavits submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 lack sufficient detail, contain little verifiable information, and in one case conflicts with the substance of the applicant's own testimony regarding his employment in this country during the period in question. In addition, the probative value of the two receipts from the office of optometrists [REDACTED] and [REDACTED] in Glendale, California is questionable for the reasons discussed above.

As noted previously, counsel provided four photocopied envelopes as evidence of the applicant's residence within the United States prior to January 1, 1982 in response to the notice of intent to deny. Counsel again submitted copies of these postmarked envelopes on appeal. These envelopes were purportedly mailed to the applicant from Peru, bear Peruvian postage stamps, and contain postmarks dated August 5, 1980, February 2, 1981, June 3, 1981, and June 4, 1982, respectively. A review of the *2006 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2005), reveals the following regarding the Peruvian postage stamps affixed to the postmarked envelopes:

- The envelope postmarked August 5, 1980 bears a postage stamp with a value of twenty-five soles that commemorates Peru's return to constitutional government on July 28, 1980. The stamp pictures two laurel leaves surrounding an open book bearing the inscription "Restitucion De La Constitucionalidad 28 Julio De 1980" overlaid by the Peruvian Presidential Badge of Office on the right hand side of the stamp. This stamp is listed at page 182 of Volume 5 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as March 26, 1981.
- The envelope postmarked June 3, 1981 bears a postage stamp with a value of thirty soles that commemorates Christmas. The stamp bears a reproduction of an illustration of an Incan courier blowing on a trumpet shell that was originally contained in Felipe Guamon Poma De Ayala's book El Primer Nueva Coronica y Buen Gobierno (The First New Chronicle and Good Government) over the inscription Navidad 1981. This stamp is listed at pages 182 and 183 of Volume 5 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as December 31, 1981.

The fact that envelopes postmarked August 5, 1980 and June 3, 1981 respectively, bear stamps that were not issued until well after the date of these postmark establishes that the applicant utilized document 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 Immigration and Nationality Act (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. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

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 AAO issued a notice to both the applicant and counsel on March 29, 2007 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. The AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result having made material misrepresentations. Counsel and the applicant were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. 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.

The absence of sufficiently detailed supporting documentation, the conflicting nature of testimony relating to the applicant's employment during the period in question, and the existence of derogatory information that establishes he used postmarked envelopes in a fraudulent manner 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. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

In addition, the fact 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 rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. 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. This finding of fraud shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.12(e). Consequently, the applicant is ineligible to adjust to permanent residence under section 1104 of the LIFE Act on this basis as well.

**ORDER:**

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

**FURTHER ORDER:**

The AAO finds that the applicant knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.