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FILE:



Office: CHICAGO

Date: OCT 05 2007

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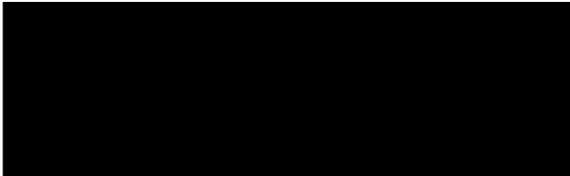
Applicant:



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



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

The director denied the application because the applicant had not demonstrated that he was physically present in the United States since before January 1, 1982 through May 4, 1988.

On appeal, the applicant states that he submitted more than twenty documents to support his claim that he entered the United States prior to January 1, 1982 and resided continuously thereafter through May 4, 1988.

The director erred in his determination that the applicant had not established physical presence in the United States from prior to January 1, 1982 through May 4, 1988. 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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). An applicant must only establish that he or she was continuously physically present in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(C) of the LIFE Act; 8 C.F.R. § 245a.11(c). Nonetheless, the evidence does not establish that the applicant has submitted sufficient evidence to establish continuous residency in the United States during the requisite period.

An applicant for permanent resident status under the provisions 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. 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 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).

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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On an affidavit to establish class membership, which he signed under penalty of perjury on October 24, 1990, the applicant stated that he first arrived in the United States in January 1980 pursuant to a visitor's visa. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury on October 24, 1990, the applicant stated that he lived at [REDACTED] in Brooklyn, New York from January 1980 to July 1987, and at [REDACTED] in Arlington Heights, Illinois from August 1987 to February 1990. The applicant did not identify any employers on his Form I-687, but stated that he drove a taxi in Brooklyn from January 1980 to July 1987, and that he worked at [REDACTED] until the date of the Form I-687 application. The applicant did not provide the state of his last employment and the name of the city is illegible.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. A December 1, 2001 affidavit from [REDACTED] in which he stated that the applicant resided in the United States from 1980 through 1988, and that his knowledge was based on direct and frequent contact with the applicant. In a November 3, 1990 affidavit, [REDACTED] stated that the applicant left the United States in July 1987 and returned in August 1987. [REDACTED] did not state the circumstances surrounding his initial acquaintance with the applicant or how he dated his relationship with him.
2. A November 30, 2001 affidavit from [REDACTED] in which he stated that the applicant was physically present in the United States from 1980 through May 4, 1988. [REDACTED] did not state his relationship with the applicant or the circumstances surrounding his initial acquaintance with the applicant.
3. Copies of two envelopes addressed to the applicant [REDACTED]. The envelopes contain a February 2 and August 3, 1981 postmark; however, the applicant stated that he lived in New York in 1981.
4. An undated letter from the Celestial Church of Christ, St. Michael's Parish in Chicago, Illinois, signed by [REDACTED]. The letter stated that in the early 1980s, the church was located on King Drive and Eberhart in Chicago, and that the applicant was active in the church from the summer of 1982 to the spring of 1984. This letter is inconsistent with the applicant's statement on his Form I-687 application, in which he stated that he lived in Brooklyn, New York from 1980 until 1987. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

5. A letter from Southern Illinois University at Carbondale addressed to the applicant at [REDACTED]. The letter is dated April [REDACTED]. We note that the applicant stated on his Form I-687 application that he lived at [REDACTED] in Brooklyn during this period.
6. A February 9, 2003 letter from [REDACTED], a pastor with the Christ Apostolic Church of America, Inc. [REDACTED] stated that he had known the applicant since [REDACTED] and that the applicant was a current member of the church. [REDACTED] did not state the circumstances of his initial acquaintance with the applicant, and did not state when the applicant became a member of the church.
7. A partial copy of a lease between the applicant and [REDACTED] as lessees and K.P.V.L. Properties as lessor for an apartment at [REDACTED]. The lease is dated [REDACTED].
8. A copy of a statement from Northwest Community Hospital addressed to the applicant at [REDACTED]. The statement is dated March 20, 1983.
9. A copy of a telephone bill from MCI WorldCom addressed to the applicant at [REDACTED]. The bill is dated September 11, 1983. As discussed above, the applicant stated that he lived in Brooklyn, [REDACTED]. Further, MCI WorldCom did not exist as a company until September 15, 1998.<sup>1</sup>
10. A copy of a letter from the University of Florida addressed to the applicant at [REDACTED]. The letter is dated [REDACTED]. The applicant stated on his Form I-687 application that he lived in Brooklyn in [REDACTED].
11. A copy of a letter from [REDACTED]. The letter is dated August 19, [REDACTED].
12. A copy of correspondence from American Express, including a response card to be submitted by March 30, 1985. The correspondence identifies the applicant's address as [REDACTED].
13. A copy of a bill from Peoples Gas addressed to the applicant at [REDACTED]. The bill is dated June 27, [REDACTED].
14. A letter from the University of Illinois at Chicago addressed to the applicant at [REDACTED]. The letter indicates that the school had received the applicant's application for admission to the school's summer quarter of [REDACTED].
15. A copy of an insurance card from Safeway Insurance Company in Chicago showing an expiration date of July 5, 1986 and the applicant's address as [REDACTED].

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<sup>1</sup> See MCI WorldCom, Inc. – Company Profile, Information, Business Description, History, Background Information on MCI WorldCom, Inc., [www.referenceforbusiness.com/history2/10/MCI-WorldCom-Inc.html](http://www.referenceforbusiness.com/history2/10/MCI-WorldCom-Inc.html), accessed on July 9, 2007.

Illinois. The applicant stated on his Form I-687 application that he moved to Arlington Heights in August 1987.

16. A copy of a magazine cover addressed to the applicant at [REDACTED]. The magazine date is November 1986.
17. A copy of a letter from Northwestern Mutual Life Insurance Company, addressed to the applicant at [REDACTED]. The letter is dated December 12, 1986. In response to a request for evidence (RFE) dated December 4, 2003, the applicant submitted the original of this document, which shows that it was dated December 12, 1989 and addressed to the applicant at [REDACTED] in Arlington Heights, Illinois.
18. A copy of a magazine cover addressed to the applicant at [REDACTED]. The date of the magazine is March 1987.
19. A letter from RACS International dated December 26, 1987, addressed to the applicant at [REDACTED]. The applicant did not claim to have lived at this address in 1987. In response to the RFE, the applicant submitted the original of this document, which reflects that it was dated December 26, 1991.

The applicant submitted numerous documents addressed to him at [REDACTED] that were dated during the qualifying period. However, according to his Form I-687 application, the applicant did not move to this address until 1990. 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 application. *Matter of Ho*, 19 I&N Dec. at 591.

On July 26, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the applicant of derogatory information. Specifically, the AAO notified the applicant that he had submitted fraudulent letters and a fraudulent phone bill in support of his application.

The AAO's July 26, 2007 notice stated:

You submitted copies of letters from Northwest Mutual Life Insurance Company and RACS International dated December 12, 1986 and December 26, 1987, respectively. However, you subsequently submitted the originals of these documents that indicate they were dated December 12, 1989 and December 26, 1991, respectively. Additionally, you submitted a copy of a telephone bill from MCI WorldCom dated September 11, 1983. However, MCI WorldCom did not exist as a company until September 15, 1998. [Footnote omitted.] By submitting false documents, you have committed visa fraud.

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 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, 591-92 (BIA 1988). The above derogatory information indicates that you have manufactured documentation in support of your visa application. For this reason, we cannot accord any of your other claims any weight.

If you choose to contest the AAO's findings, you must offer substantial evidence from credible sources addressing, explaining, and rebutting the discrepancies described above. The regulation at 8 C.F.R. § 103.2(b)(16)(i) does not specify the amount of time afforded to an applicant or petitioner to respond to derogatory evidence. We consider thirty (30) days to be ample time for this purpose. Therefore, you are hereby afforded 30 days from the date of this letter in which to respond to this notice. If you do not submit such evidence within the allotted thirty-day period, the AAO will dismiss your appeal. If you choose to respond, please submit your response to the address shown on the first page of this letter. Also, please reference your file number, A93 051 153, in your response.

Because so much of the derogatory information concerns falsified documents, we will obviously not accept any photocopied documentation as evidence to overcome the above derogatory information. Pursuant to 8 C.F.R. § 103.2(b)(5), we have the discretion to request the originals of any photocopies submitted. We reiterate that, pursuant to *Matter of Ho, supra*, you cannot overcome the above findings absent competent, objective evidence.

Section 212(a)(6)(C) of the 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.

Unless you are able to provide substantial evidence to overcome, fully and persuasively, our above findings, you are, by law, inadmissible to the United States and therefore ineligible for status as a permanent resident pursuant to the LIFE Act. While you may choose to withdraw your appeal, we advise that, because you have already violated the above section of law, a withdrawal of the application at this stage will not negate or prevent a finding of fraud and inadmissibility.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

In response, the applicant submitted a September 14, 2007 affidavit, in which he stated that letters that he provided his attorney did not include letters from Northwest Mutual Life Insurance Company and RACS International bearing the 1986 and 1987 dates. The applicant further stated that he did not provide the attorney with a telephone bill from MCI WorldCom dated September 11, 1983, and that he was unaware of any of these documents. The applicant stated that he has been unable to contact his attorney and intends to file a complaint against him.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

While the applicant asserts that he was unable to contact his attorney, the AAO's correspondence to the attorney was not returned as undeliverable. The applicant submitted no competent, objective evidence to verify his allegations against his attorney. *Matter of Ho*, 19 I&N Dec. at 591-92.

The applicant signed the Form I-485, thereby certifying under penalty of perjury that "this application and the evidence submitted with it are all true and correct."

By filing the instant application and submitting fraudulent letters and a fraudulent telephone bill, the applicant has sought to procure a benefit provided under the Immigration and Nationality Act (the Act) using fraudulent documents. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the letters and MCI telephone bill were falsifications, we affirm our finding of fraud. In addition, an applicant for permanent resident status under the provisions of the LIFE Act must establish that he or she is admissible as an immigrant. Section 1104(c)(2)(D)(i) of the LIFE Act. Because of his attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the applicant's eligibility is not credible. Accordingly, the applicant has not established his eligibility for the requested immigrant visa classification.

Regarding the instant application, the applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and the remaining documentation. 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 applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act, or that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act. In addition, because he has

attempted to procure a benefit under the Act through fraud, he is inadmissible under section 212(a)(6)(C) of the Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The record reflects that the applicant was arrested by the Rolling Meadows, Illinois Police Department on November 11, 1995 and charged with battery. The record also contains a March 18, 2003 "certification of expungement," certifying that the conviction was ordered expunged from the applicant's record by the circuit court of Cook County, Illinois. However, for immigration purposes, these convictions are still convictions. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

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