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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 01 270 60030

Office: NEW YORK

Date: FEB 11 2009

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:

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 black ink, appearing to read "J. Grissom".

John F. Grissom, Acting 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 determined that 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. In addition, the director determined that the applicant had not established that he was continuously physically present in the United States from November 6, 1986 to May 4, 1988 because his admitted absence from this country when he traveled to Pakistan in 1987 could not be considered brief, casual, and innocent. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, the applicant reiterated his claim of residence in the United States since prior to January 1, 1982 and asserted that he had submitted sufficient evidence in support of such claim. The applicant contended that he did commit fraud or make a material misrepresentation in providing testimony regarding his children's respective dates of birth. The applicant included new and previously submitted documentation in support of the appeal.

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 Act, on August 31, 1990. Subsequently, the applicant filed his Form I-485 LIFE Act application on June 27, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment letter, receipts, a Form W-2, Wage and Tax Statement, letters of membership, a residential lease, a wedding invitation, letters responding to inquiries, an affidavit relating to his absence from the United States in 1987, certificates, and original envelopes postmarked December 14, 1981, February 13, 1983, and August 10, 1987, as well as one envelope with an indiscernible postmark.

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 July 10, 2007.

The applicant’s remarks on appeal relating to the sufficiency of the evidence he submitted 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 14, 1981, February 13, 1983, and August 10, 1987. All of these envelopes bear United States postage stamps and were presented as having been mailed to the applicant at addresses in this country that he claimed as residences during the requisite period. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 1* (Scott Publishing Company 2008), reveals the following regarding the postage stamps affixed to the envelopes:

- The original envelope postmarked December 14, 1981 bears a stamp with a value of eighteen cents that contains stylized illustrations of the Washington Monument on the left and George Washington on the right framed by laurel leaves along the bottom and far right side. The stamp also bears the precancellation overprint "Presorted First Class." This stamp is listed at page 67 of Volume 1 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 2149a A1532. The catalogue lists this stamp's date of issue as November 6, 1985.

The fact that an original envelope postmarked December 14, 1981 bears a postage stamp that was 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. 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 January 6, 2009 informing him that it was the AAO's intent to dismiss the applicant's 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 submitted a statement in which he claimed that the original envelope cited above appeared to be postmarked December 14, 1981 as the result of an imperfect application of the postmark. The applicant asserts that the envelope had actually been mailed to in December of 1986 and that the imperfect application of the postmark rendered the date December 14, 1981 rather than December 14, 1986. The applicant submits an affidavit signed by [REDACTED] the individual listed as the sender in the return address on the envelope who allegedly mailed the envelope from Washington, D.C. to the applicant in December 1986. In his affidavit, Mr. [REDACTED] contends that he did in fact mail the envelope in question in December of 1986. However, an examination of the original envelope in question establishes clearly and unequivocally that the postmark on this envelope is December 14, 1981. In addition, the address

to which the envelope was mailed to the applicant is listed on the original envelope as ' [REDACTED] [REDACTED] of the Form I-687 application filed by the applicant on August 31, 1990, where applicants were asked to list all residences in the United States since entry, the applicant listed his residences as ' [REDACTED] [REDACTED] from October 1981 to November 1984, [REDACTED] [REDACTED]' from December 1984 to November 1989, and ' [REDACTED] [REDACTED] again from December 1989 to the date the Form I-687 application was filed on August 31, 1990. Neither the applicant nor [REDACTED] provides any explanation as to either why Mr. [REDACTED] would mail the envelope to the applicant in Chicago, Illinois when he had moved and been living in [REDACTED] New York for just over two years and how the applicant was able to receive an envelope mailed to him at a Chicago address when he was living in New York at the time. Consequently, the explanation put forth by the applicant cannot be considered as reasonable under the circumstances and is without merit.

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