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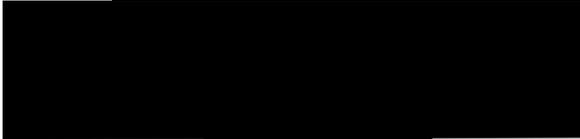
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



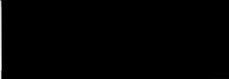
U.S. Citizenship
and Immigration
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FILE:



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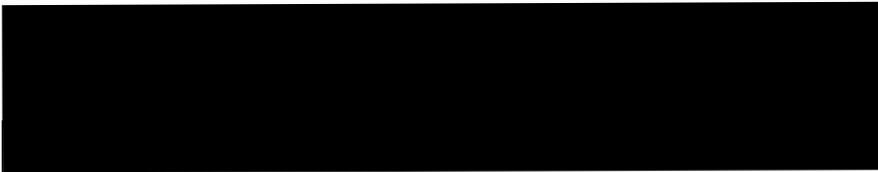
IN RE:

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:



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 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 denied the application for permanent residence because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. The director further determined that pursuant to 8 C.F. R. § 245a.6 the applicant was not eligible to adjust to temporary residence under section 245A of the Immigration and Nationality Act (Act) because he had failed to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982 to May 4, 1988.

On appeal, counsel asserted that the applicant had demonstrated a minimal understanding of the English language by communicating with the interviewing officer at the time of his two interviews. Counsel reiterated the applicant’s claim of residence in the United States since prior to January 1, 1982 and asserted that the applicant has submitted sufficient evidence in support of such claim.

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 June 10, 1991. Subsequently, the applicant filed his Form I-485 LIFE Act application on June 5, 2002.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an affidavit relating to the applicant’s absence from this country in 1987, a letter of membership, a letter from Eastern Airlines verifying the use of an ticket on this airline’s flight from John F. Kennedy International Airport in New York to Guayaquil, Ecuador on July 14, 1987, a photocopied airline ticket, and original envelopes postmarked October 5, 1981, December 2, 1981, April 3, 1982, September 6, 1982, July 3, 1983, August 8, 1983, May 2, 1984, June 2, 1984, January 13, 1985, April 1, 1985, April 8, 1986, May 4, 1986, and June 5, 1987.

The director determined that the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act and, therefore, denied the Form I-485 LIFE Act application on May 13, 2005. The director also determined that pursuant to 8 C.F.R. § 245a.6 the applicant was not eligible to adjust to temporary residence under section 245A of the Act because he had failed to demonstrate continuous unlawful residence in this country for the requisite period.

Counsel’s remarks on appeal relating to the sufficiency of the evidence submitted by the applicant 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 October 5, 1981, December 2, 1981, April 3, 1982, September 6, 1982, July 3, 1983, August 8, 1983, May 2, 1984, June 2, 1984, January 13, 1985, April 1, 1985,

April 8, 1986, May 4, 1986, and June 5, 1987. The envelopes postmarked October 5, 1981, September 6, 1982, July 3, 1983, August 8, 1983, May 2, 1984, June 2, 1984, April 1, 1985, April 8, 1986, and June 5, 1987 all bear Ecuadorian postage stamps and were represented as having been mailed to the applicant from Ecuador at addresses where he claimed to have resided in the United States as of the date of these respective postmarks. A review of the *2006 Scott Standard Postage Stamp Catalogue Volume 2* (Scott Publishing Company 2005) reveals the following:

- The envelopes postmarked July 3, 1983 contains a stamp with a value of ten sucres that is part of a block of four postage stamps commemorating the one hundredth anniversary of the Social Services Council of Guayaquil, Ecuador. The stamp contains the upper left portion of this organization's emblem. The stamp is listed at page 874 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 24, 1988.
- The envelope postmarked August 8, 1983 contains a stamp with a value of ten sucres that is part of a block of four postage stamps commemorating one hundredth anniversary of the Social Services Council of Guayaquil, Ecuador. The stamp contains the lower right portion of this organization's emblem and the Spanish phrase "DE TRADICION DE FE, AMPARO, Y ESPERANZA." The stamp is listed at page 874 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 24, 1988.
- The envelope postmarked April 8, 1986 bears a postage stamp with a value of 35 sucres that commemorates the one hundred twenty-fifth anniversary of the Colegio San Gabriel. The stamp contains a portrait of the Virgin Mary in the upper left corner and a stylized illustration of the college entrance as it appeared in the nineteenth century. The stamp is listed at page 874 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as July 25, 1988.
- The envelope postmarked June 5, 1987, bears a stamp with a value of ten sucres that commemorates the 1988 Summer Olympics in Seoul, South Korea. The stamp contains the emblem of these particular Olympics in the upper right corner and a cartoon illustration of the 1988 Summer Olympic Mascot, Hodori, the tiger running. This stamp is listed at page 875 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as March 20, 1989.

The envelopes postmarked December 2, 1981, April 3, 1982, January 13, 1985, and May 4, 1986 all contain United States postage stamps and were purportedly mailed from within this country to

the applicant at addresses where he claimed to have resided in the United States as of the date of these respective postmarks. The envelope postmarked December 2, 1981 contains a stamp with a value of eighteen cents that commemorates disabled people. A review of "Publication 100-The United States Postal Service: An American History" at <http://www.usps.com/cpim/ftp/pubs/pub100/> reveals that the United States Postal Service raised the uniform rate for domestic letters mailed in the United States from eighteen cents to twenty cents on November 1, 1981. Therefore, the eighteen cent stamp on the envelope postmarked December 2, 1981 would have been insufficient to mail this envelope on the date of this postmark. Further, a review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2005) reveals the following:

- The envelope postmarked May 4, 1986 contains a postage stamp with a value of twenty-two cents and commemorates Black Heritage. The stamp contains a portrait of Jean Baptiste Point Du Sable, pioneer trader and founder of Chicago, Illinois. This stamp is listed at page 65 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as February 20, 1987.

The fact that envelopes postmarked July 3, 1983, August 3, 1983, April 8, 1986, May 4, 1986, and June 5, 1987, all bear stamps that were not issued until after the date of these respective postmarks establishes that the applicant utilized these 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 and counsel on December 17, 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 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 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.