



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 02 124 60920

Office: NEW YORK

Date: JUL 15 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:

[Redacted]

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, and the matter came before Administrative Appeals Office (AAO) on appeal. The AAO determined that applicant had overcome the basis of denial and remanded the matter for a new decision. The director subsequently denied the application again and certified this decision for review by the AAO. This certified decision denying the application will be affirmed and the appeal will be dismissed.

The director initially denied the application based upon the determination 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. The AAO determined that the applicant had satisfied the basic citizenship skills requirement and remanded the matter for further adjudication.

In the subsequent certified decision, 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.

In response to the certified decision, counsel reiterated the applicant’s claim of residence in this country for the requisite period and asserted that the applicant had submitted sufficient evidence in support of such claim.

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 March 14, 1992. Subsequently, the applicant filed his Form I-485 LIFE Act application on February 1, 2002.

In support of his claim of residence in the United States for the requisite period, the applicant submitted a letter of employment affidavits of residence, an employment affidavit, an affidavit relating to the applicant’s absence from this country in 1987, and original envelopes.

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 December 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 certified decision, 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 in support of his claim of residence in this country for the requisite period. While many of the envelopes either do not contain a discernible postmark or are postmarked subsequent to the requisite period, three of envelopes contain discernible postmarks for February 23, 1981, August 16, 1981, and December 28, 1985. These three envelopes bear Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at addresses in this country. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 3* (Scott Publishing Company 2008), reveals the following:

- The envelope postmarked February 23, 1981 bear two of the same Mexican postage stamp each with a value of two hundred pesos. This stamp contains a stylized illustration of sliced citrus fruit, the Spanish word for citrus “citricos,” and the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner. This stamp is listed at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp’s date of issue as February 27, 1989. This envelope also bears a stamp with a value of one thousand one hundred pesos. This stamp contains notations of mineral elements and compounds, the Spanish word for minerals “minerales,” the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner, and lined burelage (a pattern of fine lines or dots printed on a stamp to discourage counterfeiting or re-use) with lines running lower left to upper right forming an arch towards the lower right corner. This stamp is listed at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1589. The catalogue lists this stamp’s date of issue as March 30, 1989.
- The envelope postmarked August 16, 1981 contains a stamp with a value of nine hundred and fifty pesos. This stamp contains a stylized illustration of two automobile engine pistons, the Spanish words for automotive parts, “partes automotricos,” and the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner. This stamp is listed at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp’s date of issue as March 30, 1989.
- The envelope postmarked December 28, 1985 bears a stamp with a value of seven hundred pesos. This stamp contains a stylized illustration of movie film, the Spanish word for cinema “cine,” and the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner. This stamp is listed at page 918 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. [REDACTED] The catalogue lists this stamp’s date of issue as 1988.

The fact that envelopes postmarked February 23, 1981, August 16, 1981, and December 28, 1985 all bear postage stamps that were not issued until well 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 May 19, 2009 informing the parties that it was the AAO's intent to affirm the director's certified decision and 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 parties were granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, counsel submits a statement in which he contends that the applicant denied any wrongdoing relating to the postmarked envelopes in question. However, the applicant's denial of wrongdoing cannot be considered as sufficient to overcome the derogatory information relating to the envelopes postmarked February 23, 1981, August 16, 1981, and December 28, 1985, which he himself submitted in support of his claim of residence in the United States since prior to January 1, 1982.

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 certified decision denying the application is affirmed and the appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.