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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 207 60015

Office: NEW YORK

Date: **MAR 09 2009**

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, Missouri Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000 as required by section 1104(b) of the LIFE Act.

On appeal, the applicant reiterated both his claim of residence in the United States since prior to January 1, 1982 and his claim to class membership in one of the requisite legalization class-action lawsuits. The applicant provided copies of previously submitted documentation in support of his appeal.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (Zambrano). Section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." 8 C.F.R. § 245a.14.

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.

Although the director denied the Form I-485 LIFE Act based upon the determination that the applicant had not demonstrated that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000, the issue being examined in the current proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing his continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant filed two separate Form I-485 LIFE Act applications on April 25, 2002 and April 15, 2003, respectively. In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, employment affidavits, letters from physicians, letters of membership, receipts, photocopied envelopes, and original envelopes.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating class membership in one of the requisite legalization class action lawsuits and, therefore, denied the Form I-485 LIFE Act application on January 31, 2003.

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 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 filed two separate Form I-485 LIFE Act applications with United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service of the Service) on April 25, 2002 and April 15, 2003,

respectively. With the Form I-485 LIFE Act application filed on April 25, 2002, the applicant included a Form G-325A, Report of Biographic Information, dated April 15, 2002 that he signed under notice of severe penalties for knowingly and willfully falsifying or concealing a material fact. On the Form G-325A dated April 15, 2002, the applicant testified that he resided in Bangladesh from the month of his birth, November 1962, until September 1986. Additionally, the applicant submitted another separate Form G-325A dated April 13, 2003, which was included with the Form I-485 LIFE Act application filed on April 15, 2003. On the Form G-325A dated April 13, 2003, the applicant revised his testimony by specifying that he resided in Bangladesh from the month of his birth, November 1962, until May 1996. The applicant's testimony on the two separate Form G-325A's contained in the record directly contradicted his claim of continuous residence in the United States from before January 1, 1982 until May 4, 1988.

The applicant's contradictory testimony establishes that he material misrepresentations in an attempt to establish his residence within the United States for the requisite period 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 October 14, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the contradictory testimony that he himself had provided and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. In addition, the AAO provided an analysis of the applicant's supporting documents that fully described and noted the deficiencies and conflicts contained in testimony within these documents. The parties were granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits a statement in which he once again reiterates his claim of residence in the United States since prior to January 1, 1982 and asserts that he had submitted sufficient evidence in support of such claim. The applicant asserts that the contradictory testimony within the two Form G-325A's was merely the result of typographical errors that he made in filling out these forms. However the explanation put forth by the applicant cannot be considered as reasonable or sufficient in light of the fact that the applicant offered such contradictory testimony in not one but in both Form G-325A's. The applicant's conflicting

testimony in the Form G-325A's discussed above completely diminished the credibility of his claim of residence in this country for the period in question as well as his own overall credibility.

The existence of derogatory information that establishes the applicant made material misrepresentations by admitting that he lived in Bangladesh rather than the United States from his birth until in one case until 1986 and in the other until 1996 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.<sup>1</sup>

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<sup>1</sup> A post-decision examination of the record reveals that the applicant submitted an original envelope that is postmarked August 4, 1987 in support of his claim of residence in the United States since prior to January 1, 1982. The applicant included this envelope in his response to a notice of intent to deny issued by the director of USCIS's New York office on April 26, 2006, which related to a separate Form I-687, Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, that had been filed pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) by the applicant on October 31, 2005. The envelope bears Bangladeshi postage stamps and was represented as having been mailed from Bangladesh to the applicant at an address in this country. 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 this envelope:

The envelope postmarked August 4, 1987 bears a stamp with a value of ten takas that commemorates Sport and the Environment. The stamp contains a stylized illustration of a runner bearing a torch and running from left to right towards a fire blackened tree. This stamp is listed at page 735 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue with catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as January 10, 2004. The fact that an envelope postmarked August 4, 1987 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

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.

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residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to both temporary residence under section 245A of the Act and the CSS/Newman Settlement Agreements and 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.