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U.S. Citizenship
and Immigration
Services

L2

FILE:

Office: NEW YORK

Date: MAR 12 2009

MSC 01 311 60237

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.

A handwritten signature in black ink, appearing to read "J. Grissom", written over a light gray rectangular background.

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 because the applicant had not demonstrated that she 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.

On appeal, 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 her 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 May 10, 1991. Subsequently, the applicant filed her Form I-485 LIFE Act application on August 7, 2001.

In support of her claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment letter, employment affidavits, receipts, an affidavit relating to the applicant’s purported absence from this country in 1987, a letter regarding medical treatment purportedly received by the applicant during the requisite period, a letter to the applicant from New York Telephone, a letter from Ecuatoriana Airlines relating to the applicant’s purported trip on this airline on June 3, 1987, and original envelopes postmarked November 12, 1981, April 25, 1982, February 24, 1983, October 1, 1986, and July 30, 1987, respectively.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating her 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 August 27, 2007.

Counsel’s remarks on appeal relating to the sufficiency of the evidence submitted by the applicant in support of her 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 her 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 November 12, 1981, April 25, 1982, February 24, 1983, October 1, 1986, and July 30, 1987. All of these envelopes bear Ecuadorian postage stamps and were represented as having been mailed to the applicant from Ecuador at addresses in this country that she claimed as residences during the requisite period. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 2* (Scott Publishing Company 2008), reveals the following regarding the Ecuadorian postage stamps affixed to the envelopes:

- The envelope postmarked November 12, 1981 bears a postage stamp with a value of two sucres that commemorates the fourth centennial (in 1982) of the death of Saint Teresa of Jesus of Avila. This stamp contains a stylized illustration of the face of Saint Teresa. This stamp is listed at page 921 of Volume 2 of the *2009*

Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as March 28, 1983. The envelope also contains an airmail stamp with a value of 13.6 sucres that commemorates President Jaime Roldos and his wife Martha B. de Roldos. The stamp contains a photograph of the Independence Monument in Quito, Ecuador in the center flanked by a stylized illustration of President Roldos on the left and a stylized illustration of his wife Martha on the right. This stamp is listed at page 952 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number C738 A179. The catalogue lists this stamp's date of issue as May 25, 1983.

- The envelope postmarked April 25, 1982 bears a stamp with a value of two sucres that commemorates the fourth centennial (in 1982) of the death of Saint Teresa of Jesus of Avila. This stamp contains a stylized illustration of the face of Saint Teresa of Jesus of Avila. This stamp is listed at page 921 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as March 28, 1983.
- The envelope postmarked February 24, 1983 bears a stamp with a value of two sucres that commemorates the proclamation of 1983 as World Communications Year by the United Nations. This stamp contains the symbol of World Communications Year consisting of two yellow and red hearts on the left and top and two blue and green hearts on the right and bottom. This stamp is listed at page 921 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1040 A328. The catalogue lists this stamp's date of issue as October 11, 1983. The envelope also bears a postage stamp with a value of five sucres that commemorates Christmas of 1983. The stamp contains a stylized illustration of the three kings riding camels following the star of Bethlehem. This stamp is listed at page 921 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The envelope also bears a postage stamp with a value of six sucres that commemorates Christmas of 1983. The stamp contains a stylized illustration of a priest in front of a Christmas tree. This stamp is listed at page 921 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists both of these stamps' date of issue as July 7, 1984. The envelope also bears another stamp with a value of five sucres that commemorates the fourth archbishop of Quito, Ecuador, Jose Maria de Jesus Yerovi. This stamp is listed at page 921 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1984.

The fact that envelopes postmarked November 12, 1981, April 25, 1982, and February 24, 1983, all bear postage stamps that were not issued until after the date of each respective postmark establishes that the applicant utilized these documents in a fraudulent manner and made material

misrepresentations in an attempt to establish her residence within the United States for the requisite period. This derogatory information establishes that the applicant made material misrepresentations in asserting her claim of residence in the United States for the period in question and thus casts doubt on her eligibility for adjustment to permanent residence under the provisions of the LIFE Act. By engaging in such an action, the applicant has negated her own credibility, the credibility of her 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 January 29, 2009 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that she utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish her 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, neither the applicant nor counsel has submitted a response to the AAO's notice. Therefore, the record must be considered complete.

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 her burden of proof in establishing that she 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 she 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 she 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.