

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeal MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

L2

[REDACTED]

FILE:

MSC 01 362 61825

Office: GARDEN CITY

Date: **MAR 31 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 denied by the Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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.

On appeal, the applicant reiterated both his claim as a class member in one of the requisite legalization class-action lawsuits and residence in this country for the required period. The applicant asserts that he had submitted sufficient evidence to demonstrate his residence in this country during the period in question. The applicant provided copies of previously submitted documentation as well as new documents in support of his 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 his 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 October 11, 1990. Subsequently, the applicant filed his Form I-485 LIFE Act application on September 27, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence and original postmarked 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 November 2, 2007.

The applicant’s remarks on appeal regarding the sufficiency of evidence he submitted to demonstrate his residence in this country during the period in question have been considered. 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 November 26, 1981, December 14, 1981, December 17, 1982, May 11, 1983, March 15, 1984, June 5, 1984, August 22, 1985, February 24, 1986, and December 21, 1987, respectively. The envelopes bear Brazilian postage stamps and were represented as having been mailed from Brazil to the applicant at addresses in this country that he claimed as residences as of the dates of these respective postmarks. 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 these envelopes:

- The envelope postmarked May 11, 1983 bears a stamp with a value of two hundred and fifty cruzieros that commemorates the fifth centennial of the painting of the Resurrection of Christ by Raphael. The stamp depicts that portion of the painting with Jesus Christ in red robe flanked by angels on both sides. The stamp is listed at page 1054 of Volume 1 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp’s date of issue as May 25, 1983.

- The envelope postmarked March 15, 1984 bears a stamp with a value of five hundred eighty five cruzeiros that commemorates the sixty fifth anniversary of the Girl Scouts in Brazil. The stamp contains a stylized illustration of a Girl Scout in uniform standing in front of a tent. This stamp is listed at page 1056 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as August 13, 1984.

The envelope postmarked August 22, 1985 bears a stamp with a value of five cruzados. The stamp contains a stylized illustration of St. Anthony's Chapel in Sao Roque, Brazil. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as December 30, 1986. The envelope also bears a postage stamp with a value of twenty cruzados that contains a stylized illustration of the Principe da Beiro Fort in Mato Dentro, Brazil. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as September 18, 1987. The envelope also bears four of the same stamp each with a value of fifty cruzados that contains a stylized illustration of the Jesus of Matozinhos Church. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as September 18, 1987.

- The envelope postmarked February 24, 1986 bears three of the same Brazilian postage stamp each with a value of ten cruzados. The stamp contains a stylized illustration of Saint Lawrence of the Indians Church in Niteroi, Brazil. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as June 2, 1987. The envelope also bears a stamp with a value of fifty cruzados that contains a stylized illustration of the Jesus of Matozinhos Church. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as September 18, 1987. The envelope also bears four of the same stamp each with a value of two hundred cruzados that contains a stylized illustration of Caso Dos Contos in Ouro Preto, Brazil. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as May 9, 1988.
- The envelope postmarked December 21, 1987 bears a stamp with a value of five hundred cruzados that contains a stylized illustration of the Antiga Alfandega in Belem, Brazil. This stamp is listed at page 1059 of Volume 1 of the 2009 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 22, 1988.

The fact that envelopes postmarked May 11, 1983, March 15, 1984, August 22, 1985, February 24, 1986, and December 21, 1987 all bear postage 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 January 29, 2009 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 envelope 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, the applicant submits a statement in which he indicated that counsel was responsible for and had submitted documentation in support of his Form I-485 LIFE Act application. The applicant states that a brief will be forthcoming within thirty days. However, the record shows that as of the date of this decision, neither the applicant nor counsel has submitted any additional brief, statement, or evidence in response 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.