



U.S. Citizenship
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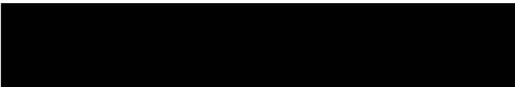
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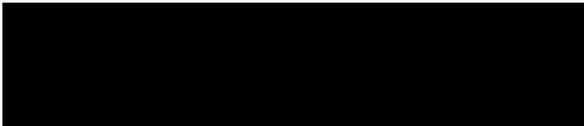
IN RE:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Baltimore, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed with a finding of inadmissibility.

The district director denied the application because the applicant failed to demonstrate that he was in unlawful status in the United States as of January 1, 1982. Although the director determined that the applicant established his presence in the United States prior to January 1, 1982, the applicant failed to establish that he was in unlawful status and his status was known to the government.

On appeal, counsel, on behalf of the applicant, asserts that the government was in possession of the applicant's forged passport that was defective on its face. He contends that the defective document constructively put the government on notice that the applicant was in unlawful status prior to January 1, 1982. Counsel also contends that the applicant's 1985 entry into the United States on a visa was obtained through misrepresentation and, therefore, the applicant remained in unlawful status. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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 through May 4, 1988. *See* § 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 and is otherwise eligible for adjustment of status under section 1104 of the LIFE Act. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, *NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

8 C.F.R. § 245a.12(e). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

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.

Even if the director has some doubt as to the truth, if the applicant 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 (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.

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, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On August 20, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The applicant must also qualify as a subclass member pursuant to the terms of the *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration, et al.* Stipulation of Settlement (Case No. 88-379R) (*NWIRP Settlement Agreement*), as stated below.

All persons who entered the United States in a non-immigrant status prior to January 1, 1982, who are otherwise prima facie eligible for legalization under section § 245A of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below, and who . . . was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the "known to government" requirement or the requirement that s/he demonstrate that his/her unlawful residence was continuous.

Pursuant to the *NWIRP Settlement Agreement*, a person who violated the terms of their nonimmigrant status prior to January 1, 1982, in a manner known to the government includes those for whom documentation or the absence thereof existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982 in a manner known to the government.

The record reflects that the applicant claims to have entered the United States in 1980 on a fraudulent passport under the name of [REDACTED]. In the Notice of Decision, the director determined that the applicant had submitted sufficient evidence to establish his presence in the United States prior to January 1, 1982; however, the applicant failed to submit documentary evidence to establish his lawful entry into the United States with a fraudulent passport. The applicant has the burden to establish by a preponderance of the evidence that he entered the United States in lawful status. As previously stated, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6). No relevant documentary evidence was submitted to establish the applicant's lawful entry into the United States. The applicant has failed to establish that he entered the United States in lawful status. Therefore, the issue of whether the applicant's status was known to the government will not be addressed.

The issue in this proceeding is whether the applicant has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have resided in an unlawful status during the requisite period consists of attestations from individuals claiming to know the applicant, letters of employment, and numerous documents dated during the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains four letters of employment which contain statements that the applicant was employed for all, or a portion of, the requisite period. However, the letters do not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). The letters fail to provide the applicant's address at the time of employment, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Given the lack of relevant details, the letters provide minimal probative value as evidence in support of the applicant's claim.

The affidavits from [REDACTED] and [REDACTED] are general in nature and state that the affiants have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite

period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The majority of the witness statements fail to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record also contains a copy of the applicant's passport issued in Libreville, Gabon, on February 21, 1985. The passport contains the applicant's F-1 visa to the United States, issued on November 29, 1985. The record contains the applicant's Form I-20 which reflects that the applicant entered the United States on his F-1 visa in 1985. The record contains a 1986 insurance agreement in the applicant's name, the applicant's Form W-2 Wage and Tax Statements in 1986, 1987 and 1988, the applicant's school records in the United States dated in 1986, 1987 and 1988, numerous vendor receipts dated throughout the requisite period, and postmarked envelopes (to be discussed later in the decision). Based on this evidence, the applicant has established his presence in the United States in 1985 through the remainder of the requisite period.

The applicant, however, has not established his continuous residence from prior to January 1, 1982 through 1984. It is noted that the record contains a Form G-325A, Biographic Information, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On his Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was in Libreville, Gabon, from January 1977 through November 1985. This indicates that the applicant did not begin residing in the United States until after November 1985. This information directly contradicts the applicant's claim to have entered the United States prior to January 1, 1982, and to have continuously resided in the United States throughout the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although this inconsistency was raised by the director in the Notice of Intent to Deny (NOID), counsel failed to specifically address the

issue. In his rebuttal to the NOID, counsel makes a general statement that any discrepancies in dates provided by the applicant was the result of human error caused by the lapse of more than 20 years. The AAO finds counsel's assertion to be insufficient as the record contains no independent, objective evidence to explain the above inconsistency. This inconsistency casts serious doubt on the credibility of the applicant's claim of continuous residence during the requisite period.

Based upon the foregoing, the documents submitted in support of the applicant's claim have been found to be inconsistent or to have minimal probative value as evidence of the applicant's continuous residence in the United States throughout the requisite period. Therefore, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous residence from prior to January 1, 1982, through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act.

Misrepresentation

Beyond the decision of the director, in connection with his application, the applicant submitted four postmarked envelopes, addressed to the applicant at his purported residence in Alexandria, Virginia. The envelopes were purportedly mailed to him from Cameroon, bear the Republic of Cameroon postage stamps, and contain postmarks dated in 1980, June 14, 1981, March 17, 1982, and June 25, 1984. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 2* (Scott Publishing Company 2008), reveals the following regarding the Republic of Cameroon postage stamps affixed to the postmarked envelopes:

- The envelope postmarked in 1980, bears a postage stamp with a value of 25 francs that contains the picture of Euxanthe Trajanus Ward. This stamp is listed at page 35 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 645 A170. The catalogue lists this stamp's date of issue as October 15, 1978. The same envelope also bears a postage stamp with a value of 60 francs that contains the picture of Vultures. This stamp is listed at page 38 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 764 A222. The catalogue lists this stamp's date of issue as October 10, 1984.
- The envelope postmarked on June 14, 1981, bears a postage stamp with a value of 60 francs that contains the picture of Vultures. This stamp is listed at page 38 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 764 A222. The catalogue lists this stamp's date of issue as October 10, 1984.
- The envelope postmarked on March 17, 1982, bears a postage stamp with a value of 25 francs that contains the picture of Euxanthe Trajanus Ward. This stamp is listed at page 35 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 645 A170. The catalogue lists this stamp's date of issue as October 15, 1978. The same envelope also bears a postage stamp with a value of 140 francs that contains the picture

of Pole Vault. This stamp is listed at page 40 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 839 A252. The catalogue lists this stamp's date of issue as October 1, 1987.

- The envelope postmarked on June 25, 1984, bears a postage stamp with a value of 140 francs that contains the picture of Pole Vault. This stamp is listed at page 40 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 839 A252. The catalogue lists this stamp's date of issue as October 1, 1987.

The fact that the envelopes postmarked in 1980, on June 14, 1981, March 17, 1982, and June 25, 1984, bear stamps first issued at least three or four years after the date of the postmark tends to establish that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish your residence within the United States for the requisite period. By engaging in such an action, the applicant has seriously diminished his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 through May 4, 1988. Consequently, it is concluded that the applicant 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. Therefore, he is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

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 above derogatory information reflects that the applicant has misrepresented the date of his first arrival in the United States and thus casts doubt on his eligibility.

In response to a Notice of Intent to Deny and Make a Finding of Fraud (NOID), dated June 30, 2009, counsel asserts that, due to the widespread corruption in Cameroon, the applicant was a victim of stamp counterfeiting. Counsel submits several articles on corruption, embezzlement and stamp counterfeiting in Cameroon. None of the articles specifically address stamp counterfeiting in Cameroon during the requisite period. The articles are deemed to be not relevant to the issue at hand.

Counsel also submits an affidavit from _____ a professor of African Studies at Howard University. The affiant asserts that he is an expert witness in African politics and culture to rebut the finding of fraud. The affidavit describes a brief and general history of stamps in Africa and how stamps are subject to political and social pressure from special interest groups. He theorizes that, due to corruption in the region, "...political actors most probably issued and circulated illegally postdated stamps for their former customers and allies." He further states:

In the absence of evidence linking the applicant to the production of such a stamp dated in 1984 and clandestinely securing a postal officer to postmark it with a 1980 date, the affiant is convinced that the anachronisms are simply the perpetrations of a greedy leadership tampering with their postal services to make money among their people and foreign numismatic collectors.

The AAO finds the above evidence to be unpersuasive. The affidavit fails to provide any evidence to directly link the applicant to stamp counterfeit fraud on the part of the Cameroon government. The applicant has failed to provide sufficient evidence to overcome, fully and persuasively, the findings in the NOID.

The above derogatory information indicates that the applicant has misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for this visa classification. Consequently, it is concluded that the applicant 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. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

Section 212(a)(6)(C) of the Immigration and Nationality Act (Act) provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under BIA precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant application and submitting the fraudulent evidence described above, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the postmarked envelopes were falsifications, the AAO affirms the finding of fraud. In addition, an applicant for permanent resident status under the provisions of the LIFE Act must establish that he or she is **admissible as an immigrant. Section 1104(c)(2)(D)(i) of the LIFE Act.** Because of the applicant’s attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D.

Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.