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



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 02 065 62593

Office: GARDEN CITY

Date:

SEP 08 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, Garden City, 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 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, 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. Counsel submitted a new affidavit in support of the applicant's claim of residence in the United States.

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.

The first issue to be examined 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 July 25, 1990. Subsequently, the applicant filed his Form I-485 LIFE Act application on December 4, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, original receipts, an employment affidavit, 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 May 23, 2008.

Counsel’s remarks on appeal relating to the sufficiency of the evidence submitted by the applicant 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 submitted supporting documentation including original envelopes postmarked December 30, 1981, May 6, 1985, July 16, 1985, and December 15, 1986 in support of his claim of residence in this country since prior to January 1, 1982. These envelopes bear Pakistani postage stamps and were represented as having been mailed from Pakistan to the applicant at addresses in this country. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2008), reveals the following:

The envelope postmarked December 30, 1981 bears two of the same stamp each with a value of twenty paisas that contains a stylized illustration of Attock Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number 616 A289. The catalogue lists this stamp’s date of issue as 1984. The envelope also bears two of the same postage stamp each with a value of eighty paisas that contains a stylized illustration of the Ranikot Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue

number 620 A289. The catalogue lists this stamp's date of issue as 1986. This envelope also bears a postage stamp with a value of ten rupees that contains a portrait of Mohammad Ali Jinnah on the left flanked by a multicolor pattern on the right. This stamp is listed at page 22 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 814 A424. The catalogue lists this stamp's date of issue as September 11, 1994.

The original envelope postmarked July 16, 1985 bears a postage stamp with a value of five rupees that contains the picture of Mohammad Ali Jinnah framed by a multicolor oval. This stamp is listed at page 19 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 717 A357. The catalogue lists this stamp's date of issue as August 14, 1989.

The fact that original envelopes postmarked December 30, 1981 and July 16, 1985 both bear postage stamps that were not issued until well after the date of these 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 June 24, 2009 informing the parties that it was the AAO's intent to 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.

The record shows that as of the date of this decision, neither counsel nor the applicant has submitted a response to the 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 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).

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 [or other office] does not identify all of 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).

Beyond the director's decision, the next issue to be examined in this proceeding is whether the applicant is ineligible because of his criminal record. A review of the record reveals the following relating to the applicant's criminal history:

An arrest for violations of sections 221.05, Unlawful Possession of Marihuana, and 265.01, Criminal Possession of a Weapon in the 4<sup>th</sup> Degree, of the New York Penal Law by the Suffolk County Police Department on February 4, 2002. The disposition of these criminal charges is unknown.

A felony conviction for violations of sections 110.00 and 160.10, Attempted Robbery in the 2<sup>nd</sup> Degree, of the New York Penal Law in the 1<sup>st</sup> District Court of Suffolk County, New York on June 10, 2003. The applicant was sentenced to ninety days in jail and five years of probation on September 3, 2003 as a result of this felony conviction.

An applicant is ineligible to adjust to permanent resident if he or she has been convicted of any felony or of three or more misdemeanors committed in the United States. Section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1).

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The applicant and counsel were informed of the additional basis of ineligibility in the notice issued by the AAO on June 24, 2009. The parties were granted fifteen days to provide evidence to overcome, fully and persuasively, these findings. As has been noted, neither counsel nor the applicant has submitted a response to the notice. Therefore, the record must be considered complete.

Consequently, the applicant is also ineligible to adjust to permanent resident status under section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1) as a result of his felony conviction on June 10, 2003. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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