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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

L2

FILE: [REDACTED]
MSC 02 059 61908

Office: PHILADELPHIA

Date: SEP 24 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, Philadelphia, Pennsylvania, 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, the applicant's representative 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. The applicant's representative submitted new affidavits 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 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 March 5, 1991. Subsequently, the applicant filed his Form I-485 LIFE Act application on November 28, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, worker affidavits, an affidavit of membership, a letter from a doctor, a letter of employment, a letter relating to the applicant absence from the United States in 1987, photocopied pay statements, photocopied receipts, and photocopied 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 September 6, 2008.

The remarks of the applicant’s representative on appeal relating to the sufficiency of the evidence submitted by the applicant in support of his claim of continuous residence are noted. On May 7, 2009, the AAO issued a notice to the parties requesting that the applicant provide the originals of photocopied receipts and photocopied envelopes that had been previously submitted in support of the applicant’s claim of residence. In response, the applicant’s representative provided original receipts but no additional original documents. The applicant’s representative asserted that the applicant had previously submitted all original documents that were in his possession to the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) years ago.

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 a photocopied envelope postmarked October 20, 1984. This envelope bears Peruvian postage stamps and was represented as having been mailed from Peru to the applicant at the address in this country that he claimed to have resided from June 1983 to January 1985. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2008), reveals the following:

- The photocopied envelope postmarked October 20, 1984 bears a stamp with a value of one thousand sucres that commemorates Christmas of 1984. The stamp contains a reproduction of the painting “The Adoration of the Sheperds” by an unknown artist and is listed at page 196 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 827 A320. The catalogue lists this stamp’s date of issue as December 11, 1984.

The fact that a photocopied envelope postmarked on October 20, 1984 bears a postage stamp that was not issued until 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 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 his representative 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 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’s representative contends that the applicant cannot be held responsible for any discrepancies related to photocopied envelope in question as he was the recipient of the envelope with no knowledge that the stamp contained on this photocopied envelope was issued subsequent to the date of the postmark. The applicant’s representative asserts that even if it was determined that this discrepancy between the stamp issue date and the date of the postmark amounted to misrepresentation it was not misrepresentation of a material fact. However, neither the applicant nor his representative provide any explanation as to why or for what purpose the individual who sent the envelope would undertake the fraudulent act of applying a postmark that predated the issue date of a stamp on the envelope. Furthermore, it was the applicant himself that represented he actually received the photocopied envelope at his claimed address of residence in this country shortly after the postmark date of October 20, 1984 by submitting the photocopied

envelope in support of his claim of residence in the United States for the period in question. The applicant is the only individual who would benefit from such a fraudulently created document being accepted as credible evidence establishing his residence in this country for the requisite period. Consequently, it must be determined 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 since prior to January 1, 1982.

The applicant's representative declares that the AAO is relying on a photocopied document to make its findings rather than the original envelope which would rebut the claim of fraud and misrepresentation. The applicant's representative asserts that the applicant believes that he submitted original documents, including the original of the photocopied envelope, to USCIS in 2001. The applicant's representative submitted a Form G-884, Request for the Return of Original Documents, on the applicant's behalf. However, contrary to the applicant's stated belief, the record does not contain any original postmarked envelopes as it has been the applicant and his representatives who have continuously submitted photocopies of postmarked envelopes throughout these proceedings. The sole purpose of the notice issued by the AAO on May 7, 2009 was to request that the applicant provide the originals of photocopied receipts and photocopied envelopes that had been previously submitted in support of the his applicant's claim of residence. As noted previously, the applicant's representative provided original receipts but no additional original documents in response to the notice issued on May 7, 2009. The applicant's request for the return of original documents shall be processed subsequent to the adjudication of his appeal.

The applicant's representative requested that he applicant be provided with a sixty day extension to obtain independent corroborative evidence from the sender of the photocopied envelope postmarked October 20, 1984 in order to rebut the AAO's findings. However, the record shows that as of the date of this decision, neither the applicant nor his representative has submitted any additional material to supplement the response. 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 a falsified document, 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.