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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[redacted]

FILE: [redacted] Office: [redacted] Date: AUG 2 6 2010

MSC 03 088 60850

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.

[redacted]

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, the applicant reiterated his claim of residence in this country for the required period and asserted that he had 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 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 or about December 14, 1989. Subsequently, the applicant filed his Form I-485 LIFE Act application on December 27, 2002.

In support of his claim of residence in the United States for the requisite period, the applicant submitted photocopied 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 relating to the sufficiency of the evidence he submitted 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 consisting of photocopied envelopes postmarked January 22, 1982, May 24, 1982, an indeterminate day in May 1982, June 6, 1983, January 10, 1985, an indeterminate day in January 1985, February 1, 1986, April 10, 1986, and April 22, 1987. Although the record contains additional photocopied postmarked envelopes, these envelopes either bear an indiscernible postmark or are postmarked after the termination of the requisite period on May, 4 1988. The envelopes bear Indian postage stamps and were presented as having been mailed from India to the applicant at addresses in this country including addresses that he claimed as residences during the period in question. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 3 (Scott Publishing Company 2009), reveals the following regarding the postage stamps affixed to these envelopes:

- The envelope postmarked January 22, 1982 bears a stamp with a value of 3.05 rupees that commemorates the Radio Telescope at Ooty, India. This stamp contains a stylized illustration of an array of radio telescope antennas. This stamp is listed at page 896 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 955 A602. The catalogue lists this stamp's date of issue as March 23, 1982.

- The envelope postmarked June 6, 1983 bears a stamp with a value of two rupees that commemorates the twenty-fifth anniversary of the founding of the [redacted] The stamp contains a stylized illustration of [redacted] This stamp is listed at page 897 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1026 A641. The catalogue lists the date of issue for this stamp as August 27, 1983.

- The envelope postmarked an indeterminate day in January 1985 bears a stamp with a value of two rupees that commemorates the fortieth anniversary of the founding of the United Nations. The stamp contains a stylized illustration of [redacted] an address at a podium. This stamp is listed at page 899 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1097 A691. The catalogue lists the date of issue for this stamp as October 24, 1985. This envelope also bears a stamp with a value of fifty paises that commemorates famous Indians. The stamp contains a stylized portrait of [redacted] is stamp is listed at page 900 of Volume 3 of the [redacted] *Catalogue* as catalogue number 1103 A639. The catalogue lists the date of issue for this stamp as December 2, 1985. This envelope also bears a stamp with a value of three rupees that commemorates South Asian Regional Cooperation. The stamp contains a stylized illustration of the flag of India in the center surrounded by the flags of (going clockwise from upper left to lower left) [redacted], Nepal, and Bhutan. This stamp is listed at page 900 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1105 A697. The catalogue lists the date of issue for this stamp as December 8, 1985.

  The envelope postmarked February 1, 1986 bears a stamp with a value of five rupees that commemorates World Cup of Soccer hosted by Mexico in 1986. The stamp contains a stylized illustration of two players fighting for control of the ball of the left and a lined globe bearing the notation "World Cup Football Mexico" on the right. This stamp is listed at page 900 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1121 A711. The catalogue lists this stamp's date of issue as May 31, 1986. This envelope also bears a stamp with a value of fifty paises that commemorates famous Indians. The stamp contains a stylized portrait of freedom fighter Sagarmal Gopa. This stamp is listed at page 901 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1138 A639. The catalogue lists the date of issue for this stamp as December 29, 1986.

- The envelope postmarked April 22, 1987 bears a stamp with a value of two rupees that commemorates the 1913 Nobel Laureate for literature [redacted] The stamp contains a stylized portrait [redacted] This stamp is listed at page 901 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as

> catalogue number 1157 A738. The catalogue lists this stamp's date of issue as May 8, 1987. This envelope also bears a stamp with a value of one rupee that commemorates physician and guru a. The stamp contains a stylized portrait of . This stamp is listed at page 901 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1169 A749. The catalogue lists the date of issue for this stamp as September 1, 1987.

The fact that photocopied envelopes postmarked January 22, 1982, June 6, 1983, an indeterminate day in January 1985, February 1, 1986, and April 22, 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 June 29, 2010, 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 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.

However, the record shows that as of the date of this decision, neither the applicant nor counsel 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 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 as well.

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.