

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 Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE: [Redacted]
MSC 01 292 60066

Office: NEW YORK

Date: FEB 01 2010

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:

SELF-REPRESENTED

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.

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, New York, 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 submitted three new affidavits in support of his claim of residence in this country for the requisite period.

Although a Notice of Entry of Appearance as Attorney of Representative (Form G-28) has been submitted, the individual who provided this document is not currently authorized under either 8 C.F.R. §§ 292.1 or 292.2 to represent the applicant. Therefore, this decision will be furnished only to the applicant.

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.

At issue 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 or about July 3, 1991. Subsequently, the applicant filed his Form I-485 LIFE Act application on July 19, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment letter, employment affidavits, a photocopied residential lease, affidavits relating to the applicant’s absence from this country in 1987, a letter from a doctor, an affidavit of membership, 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 October 30, 2007.

The applicant’s submission of three new affidavits in support of his claim of continuous residence in the United States for the period in question is 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 March 19, 1981, July 14, 1981, March 28, 1982, October 21, 1984, and February 12, 1987, respectively. These envelopes bear Bangladeshi postage stamps and were represented as having been mailed from Bangladesh to the applicant at the address he claimed as his residence in this country as of the date 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 envelopes postmarked March 19, 1981, July 14, 1981, and March 28, 1982 each bear at least one of the same postage stamp with a value of two takas that depicts the terminal at Zia International Airport. This stamp is listed at page 735

of Volume 1 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number 242 A70. The catalogue lists this stamp's date of issue as December 21, 1983.

- The envelope March 19, 1981 bears a postage stamp with a value of fifty paisa that depicts a mobile post office. This stamp is listed at page 735 of Volume 1 of the *2009 Scott Postage Stamp Catalogue* with catalogue number 240 A70. The catalogue lists this stamp's date of issue as December 21, 1983. This envelope also bears a postage stamp with a value of twenty-five paisa that contains a stylized illustration of a woman providing oral rehydration to a child. This stamp is listed at page 737 of Volume 1 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number 318 A89. The catalogue lists this stamp's date of issue as January 16, 1988.
- The envelope postmarked February 12, 1987 bears a postage stamp with a value of twenty-five paisa that contains a stylized illustration of a woman providing oral rehydration to a child. This stamp is listed at page 737 of Volume 1 of the *2009 Scott Standard Postage Stamp Catalogue* with catalogue number 318 A89. The catalogue lists this stamp's date of issue as January 16, 1988.

The fact that envelopes postmarked March 19, 1981, July 14, 1981, March 28, 1982, and February 12, 1987 all bear postage stamps that were not issued until 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 on December 8, 2009 informing the applicant that it was the AAO's intent to dismiss his 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 applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

The record shows that as of the date of this decision, the applicant has failed to submit 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. By filing the instant application and submitting falsified documents, 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 he submitted falsified documents, we affirm our finding of fraud. Consequently, the applicant is ineligible to adjust to permanent residence under section 1104 of the LIFE Act on this basis.

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