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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:

Office: NEW YORK

Date:

JUL 07 2010

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).

IN 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.

Elizabeth McCormack

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On July 19, 2001 the applicant filed an application for permanent resident status under the LIFE Act. On September 6, 2007, the Director issued a Notice of Intent to Deny (NOID) the application indicating that the applicant failed to establish that he had continuously resided in the United States throughout the relevant period. The applicant was given 30 days to submit additional evidence of his eligibility and to address multiple inconsistencies. On October 23, 2007, the director denied the application indicating that the applicant failed to submit a timely response to the NOID. The applicant filed a timely appeal of the October 23, 2007 decision, indicating that, in fact, he had submitted a NOID response and that the director erred in denying the applicant on that basis. On December 19, 2007, the director issued an Amended Notice of Decision, superseding the decision on October 23, 2007, finding that the applicant had submitted a response to the NOID that was not previously considered.

After considering the entire record of proceedings, the director again 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. The applicant was afforded appeal rights. The applicant filed a timely appeal on January 15, 2008.

On March 12, 2009, the AAO dismissed the appeal with a finding of fraud. The AAO hereby withdraws the decision dated March 12, 2009 in accordance with the director's amended decision dated December 19, 2007. The appeal is once again before the AAO. The appeal will be dismissed.

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 continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted affidavits of residence, letters of membership, photocopied receipts, and photocopied envelopes postmarked November 2, 1981, May 4, 1982, June 11, 1983, February 22, 1985, October 27, 1985, November 5, 1986, April 20, 1987, and February 11, 1988, respectively.

The applicant provided photocopied envelopes postmarked November 2, 1981, May 4, 1982, June 11, 1983, February 22, 1985, October 27, 1985, November 5, 1986, April 20, 1987, and February 11, 1988, in support of his claim of residence in the United States for the requisite period. These envelopes bear Indian postage stamps and were represented as having been mailed from India to the applicant at addresses in this country that he claimed as residences as of the date of these respective postmarks. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 3 (Scott Publishing Company 2008) reveals the following:

- The envelopes November 2, 1981, May 4, 1982, February 22, 1985, October 27, 1985, November 5, 1986, April 20, 1987, and February 11, 1988, all bear five of the same stamp each with a value of one rupee and containing a portrait photograph of Mahatma Gandhi. A review of the *2009 Scott Standard Postage Stamp Catalogue* reveals that similar stamps were initially issued in two different sized versions (23mm X 29mm listed at page 869 of Volume 3 of the *2009 Scott*

Standard Postage Stamp Catalogue as catalogue number [REDACTED] first issued in 1976 and 17mm X 20mm listed at page 869 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1978) both of which were valued at only twenty-five paise. Subsequent reissues of this type of stamp include a stamp with a value of thirty paise listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 842 A410 first issued in 1980, a stamp with a value of thirty-five paise listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 845 A410 first issued in 1980, and a stamp with a value of fifty paise listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 846B A410 first issued in 1983. The one rupee stamp depicting Mahatma Gandhi that is on the photocopied envelopes submitted by the applicant in support of his claim of residence in this country for the requisite period is listed at page 877 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 916 A410. This one rupee stamp depicting Mahatma Gandhi was issued on January 30, 1991.

- The photocopied envelope postmarked June 11, 1983, bears a stamp with a value of twenty-five paise that contains stylized illustrations of a farm, wheat, and a farmer on a tractor plowing. This stamp is listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1985.

The fact that envelopes postmarked November 2, 1981, May 4, 1982, June 11, 1983, February 22, 1985, October 27, 1985, November 5, 1986, April 20, 1987, and February 11, 1988 bear postage stamps that were not issued until well 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 since prior to January 1, 1982. This derogatory information 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 January 29, 2009 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 applicant and counsel were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

The record shows that as of the date of this decision, neither the applicant nor counsel has 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 the postmarked envelope in a fraudulent manner and made material misrepresentations seriously undermines 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).

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