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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:



Office: NEW YORK

Date: **SEP 27 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).

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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, counsel claimed that the applicant received ineffective assistance from his prior counsel in pursuing his application. Counsel submitted an affidavit from the applicant and additional documentation relating to the applicant's filing of a complaint against his former attorney. Counsel requested a copy of the record of proceeding and indicated that a brief would be forthcoming within thirty days of compliance with this request.

The record shows that United States and Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) complied with counsel's request with Control Number [REDACTED] and mailed a copy of the record to counsel on June 1, 2009.

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.

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 December 30, 1990. Subsequently, the applicant filed the Form I-485 LIFE Act application on July 30, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, a declaration of residence, employment letters, original receipts, photocopied receipts, a letter from [REDACTED] relating to the applicant’s purported trip on this airline on February 8, 1988, a letter from a doctor, a letter from a medical laboratory, a photocopied completion certificate, a photocopied envelope and an original envelope.

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 February 28, 2008.

Counsel’s remarks on appeal relating to the ineffective assistance purportedly provided by the applicant’s previous attorney are noted. Further, it appears that counsel and the applicant have met the requirements set forth in *Matter of Lozado*, 19 I. & N. Dec. 637, Interim Decision 3059, 1988 WL 235454 (BIA), for the claim of ineffective counsel to be examined in this proceeding. A telephone call was placed by an AAO officer to the office of the Attorney Admissions Department of Supreme Court of the State of New York, Appellate Division for the Second Judicial Department on July 27, 2010. Court Clerk [REDACTED] reported that the applicant’s former attorney had no history of any disciplinary action. A review of the precedent decisions, *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855 (9th Cir. 2004) and *Fadiga v. Attorney General, USA*, 488 F.3d 142 (3d Cir. 2007) reveals that in order for a claim of ineffective assistance to succeed, a petitioner or applicant must establish both that competent counsel would have acted differently and that the performance of counsel was so inadequate that it affected the outcome of the proceedings. In the instant case, the director denied the application because the applicant had

failed to submit sufficient credible evidence to demonstrate 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 and not because of any action or lack of action by the applicant's prior counsel. Consequently, counsel's claim of ineffective assistance from prior counsel is considered to be without merit.

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 an original envelope postmarked October 4, 1983. This envelope bears Ecuadorian postage stamps and was represented as having been mailed from Ecuador to the applicant at the address in this country that he claimed as you're his sole residence during the requisite period. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 2* (Scott Publishing Company 20098), reveals the following regarding the Ecuadorian postage stamps affixed to the envelope:

- The envelope postmarked October 4, 1983 bears a stamp with a value of five sucres that commemorates Christmas of 1983. The stamp contains a stylized illustration of the three kings riding camels following the star of Bethlehem. This stamp is listed at page 940 of Volume 2 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1044 A331. The envelope also bears a postage stamp with a value of five sucres that commemorates Christmas of 1983. The stamp contains a stylized illustration of the Holy Family. This stamp is listed at page 940 of Volume 2 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1045 A331. The catalogue lists both of these stamps' date of issue as July 7, 1984.

The fact that an envelope postmarked October 4, 1983 bears postage stamps that were not issued until well 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 counsel on June 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 was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, both the applicant and counsel submitted statements objecting to the findings relating to the envelopes as cited within the AAO's notice of January 29, 2009. Specifically, the parties object to the AAO's reliance upon the *Scott Standard Postage Stamp Catalogue* as a basis of authority regarding postage stamps. However, the *Scott Standard Postage Stamp Catalogue* is published by a private company, Scott Publishing Co, a subsidiary of Amos Press Inc. A review of the Amos Press Inc., internet website at <http://www.amospress.com/History.aspx> reveals the following:

In 1984 Amos Publishing became the world's largest philatelic publisher with the purchase of Scott Publishing Company. Scott is the most recognized name in stamp collecting and is both a publisher and merchandiser of stamp related products. The internationally renowned, 8-volume *Scott Standard Postage Stamp Catalogue* is produced annually to assist collectors in valuing and identifying their stamp holdings. A monthly magazine is also produced under the Scott name which provides collectors with entertaining and informative feature articles along with the very latest new stamp issues from around the world.

While the *Scott Standard Postage Stamp Catalogue* is privately published, it is considered to be so authoritative on the subject of postage stamps and philately (stamp collecting) that the United States Postal Service has adopted the *Scott* Numbering System as its own for identification purposes of all postage stamps issued by the United States. Further, recent editions of the *Scott Standard Postage Stamp Catalogue* are maintained at the reference desks of a large number of public libraries in the United States because the catalogue is considered to be an authoritative resource source on the subject of postage stamps and philately.

Counsel provides a printout from the website at http://en.wikipedia.org/wiki/First_day_of_issue which describes how the earliest known use of a stamp may differ from the stamp's official first day of issue (both before and after the official first date of issue) through a variety of means including accidental sale, theft, mistake of postal officials and employees, changes in perforations, no knowledge of official first day of issue, civil unrest, loss of government records, and no usage of the stamp until after the official first date of issue. Every volume of each annual edition of the *Scott Standard Postage Stamp Catalogue* contains an introduction, which includes the heading, "Catalogue Listing Policy," describing the criteria and standards which must be met for a stamp to be listed in the catalogue, those cases in which a stamp will be listed with a footnote describing unusual circumstances relating to the issuing of that particular stamp, and the reasons why some stamps are not listed in the catalogue. Although the editors of the *Scott*

Standard Postage Stamp Catalogue acknowledge that it is unable to determine the exact date of issue for some stamps, a review of the listings for stamps contained in the *Scott Standard Postage Stamp Catalogue* demonstrates that the editors list "No release date" for those stamps where no information is available relating to the official first day of issue, the year of release if the month of the official first day of issue cannot be determined, and year and month of release if the official first day of issue cannot be determined to the exact day. In this case, the *2010 Scott Standard Postage Stamp Catalogue* lists specific day, month, and year for the official first day of issue rather than a general year of issue date for the two Ecuadorian stamps contained on the postmarked envelope cited above and does not contain any footnote indicating such stamps were available prior to the official first date of issue. In addition, the editors of the *Scott Standard Postage Stamp Catalogue* correct and update any past inaccuracies or discrepancies by including a specific section at the beginning of each volume of the catalogue listing each and every addition, deletion, and change in information relating to any stamp in that volume that may have been printed in previous annual editions. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2009) at page 4A reveals that the editors did not change the listings for the first official dates of issue for any of the Ecuadorian stamps contained on the postmarked envelope cited above.

Counsel provides a number of reviews from the website <http://amazon.com> for the *2009 Scott Standard Postage Stamp Catalogue* and the *2010 Scott Standard Postage Stamp Catalogue*. While one of the reviewers indicated that up to 80% of information contained in the catalogues was in error, this individual failed to specify what information was incorrect or how such information was erroneous. Other reviewers praised the reliability of the catalogues as a reference source and indicated that errors contained in the *Scott Standard Postage Stamp Catalogue* were minor in nature and did not interfere with usability.

Counsel includes actual copies of the stamps in question and two separate affidavits that were purportedly signed by [REDACTED] who listed his position as the 3RD Zone Director Public [REDACTED] Counsel also submits a copy of Email correspondence sent from this individual. The affidavits and Email correspondence are accompanied by certified English translations. [REDACTED] claims that the Ecuadorian postal stamps in question, the five sucre stamp bearing a stylized illustration of the three kings riding camels following the star of Bethlehem and the five sucre stamp bearing a stylized illustration of the Holy Family, were in pertinent part:

...released pursuant to Ministerial Order No. 66 on December 12, 1983 and published in Official Register No. 644 of December 21, 1983. This information is recorded in the Album for Ecuadorian stamps of the Ecuadorian collector [REDACTED] [REDACTED] under number 2.383 in the case of the stamp of the Holy Family, and under number 2.385 in the case of the stamp of the Three Kings. In support of the above, I attach photographs that attest to the truth of the aforementioned information.

However, the corroborative photographs mentioned in the previous paragraph were not included with counsel's response. Further, neither counsel nor the affiant submits any evidence from a reliable reference source establishing the issue date of the stamps in question. More importantly, neither counsel nor [REDACTED] puts forth any explanation as to how stamps that were not purportedly released until December 12, 1983 as claimed, are on an envelope postmarked October 4, 1983 more than two months prior to this alleged release date. Finally, a review of the website at <http://stampsbooks.com/index.php?a=viewProd&productId=139>, reveals that two other stamps in the same series of Christmas stamps as the five sucre stamp bearing a stylized illustration of the three kings riding camels following the star of Bethlehem and the five sucre stamp bearing a stylized illustration of the Holy Family were also issued in 1984 rather than 1983. Specifically, the five sucre stamp bearing a stylized illustration of the child Jesus amongst the doctors of law (listed at page 940 in Volume 2 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1043 A331 with release date of July 7, 1984) and the six sucre stamp containing a stylized illustration of an indigenous priest (listed at page 940 in Volume 2 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1046 A331a with release date of July 7, 1984) are depicted in a gallery of Ecuadorian stamps issued from 1984 to 1996.

The existence of derogatory information that establishes the applicant used a postmarked envelope 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).

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