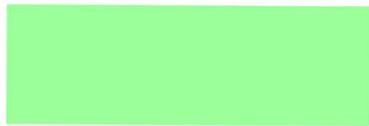


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

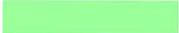


U.S. Citizenship
and Immigration
Services

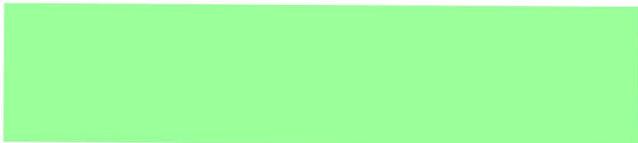


Date: **JUN 28 2013**

Office: NEW YORK

FILE: 

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 "Ron Rosenberg".

Ron Rosenberg
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's former counsel reiterated the applicant's claim of residence in this country for the requisite period and asserted that he had submitted sufficient evidence in support of such claim.

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 February 23, 1993. Subsequently, the applicant filed the Form I-485 LIFE Act application on June 4, 2003.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment letter, a letter from Admissions Office of the [REDACTED] regarding the applicant’s interest in applying to the school, affidavits relating to the applicant’s trip to Brazil from December 1982 to January 1983, photocopied pages from the applicant’s Brazilian passport, and original 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 September 14, 2007.

The applicant’s former counsel’s remarks on appeal relating to the sufficiency of the evidence the applicant 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 including original envelopes postmarked August 4, 1981, July 2, 1982, and December 9, 1984, respectively. The envelopes bear Brazilian postage stamps and were represented as having been mailed from Brazil to the applicant at an address in this country that he claimed as his residence for the entire requisite period. A review of the *2013 Scott Standard Postage Stamp Catalogue Volume 1* (Scott Publishing Company 2012), reveals the following regarding the postage stamps affixed to these envelopes:

- The envelope postmarked August 4, 1981, bears a stamp with a value of twelve cruzeros that commemorates the celebration of World Food Day, the founding of the Food and Agricultural Organization of the United Nations on October 16, 1945. The stamp depicts two stylized figures separating chafe from grain with the notation “DIA MUNDIAL DA ALIMENTACAO” in the lower left corner and the symbol of the Food and Agricultural Organization of the United Nations on the right side of the stamp. The stamp is listed at page 1078 of Volume 1 of the

2013 Scott Standard Postage Stamp Catalogue as catalogue number 1766 A943. The catalogue lists this stamp's date of issue as October 16, 1981.

The fact that an envelope postmarked August 4, 1981 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 former counsel on May 10, 2013, informing the applicant that it was the AAO's intent to dismiss his appeal based upon the fact that he 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 applicant was granted twenty-one days to provide evidence to overcome, fully and persuasively, this finding.

In response, the applicant's current attorney submits a statement in which he asserts that United States Citizenship and Immigrations Services (USCIS) has abused its discretion by ignoring entry stamps in the applicant's Brazilian passport and original airline tickets that he presented as evidence to an USCIS officer at his interview on May 17, 2004. Counsel argues that the applicant met his burden of proof in establishing his continuous residence in the United States for the requisite period and establishing his eligibility for permanent residence under the provisions of the LIFE Act. Counsel further contends:

Now, a bigger surprise has appeared in the case; that the envelope postmarked August 4, 1981 bore a stamp that was issued on October 16, 1981. This appeal is doomed to fail and will fail in light of how USCIS and AAO handle the evidence. Once the applicant submitted credible primary evidence, the burden shifted to the Service [the predecessor to USCIS, the Immigration and Naturalization Service or the Service] to prove ineligibility. AAO relies on a cancelled stamp on an envelope and ignores the visa stamp and entry stamps in the applicant's passport.

Neither of the USCIS interviews addressed the stamp issue. The applicant appealed the denial on the passport stamp issue and the AAO must address the USCIS findings and address them accordingly. Instead, the AAO has decided on its own to raise a postal stamp issue which we will endeavor to address in an anticipation of overcoming this final point and hoping no other issues will pop up to deny the case.

The AAO's May 10, 2013 decision (copy attached) indicates that the applicant submitted three original envelopes dated August 4, 1981, July 2, 1982, and December 9, 1984. The envelopes were mailed from Brazil and delivered [to] the applicant's US address. The stamps on the envelope were issued by the Brazilian postal authority and as such were valid as they were accepted for processing. AAO specifically refers to the stamp on the August 4, 1981 letter.

To facilitate the argument on the stamp, we hereby attach a larger copy thereof as Exhibit A. We also submit the Catalogue Listing Policy pages of *Scott Standard Postage Stamp Catalogue Volume 1 (2013) Page 1197 Catalogue No.: 1766 A943* as Exhibit B. The stamp is a commemorative stamp for World Food Day which coincides with October 16 every year. The said stamp has an issued date of October 16, 1981 as per the said book. However, commemorative stamps are not necessarily distributed to the postal customers and the market on the issuance dates. For example, Christmas stamps are not issued on Christmas day. They are issued weeks or months in advance to generate an awareness of the upcoming event or day. The Eid stamps are distributed in January and February to commemorate the Eid Day which is the third week of March every year. The Independence Day stamps in the United States are not issued on July 4 every year although they have an issue date of July 4. They are sold at the US Postal offices in May or June of every year. The *Scott Standard Postage Stamp Catalogue's* introduction on Page 17A makes a reference to each stamp's basic information as numbered 5 on the said page. There is no reference on the said stamp regarding No. 5 which carries the basic information.

As such, the World Food Day stamp, although commemorates the day on October 16 every year, carries the issue date of October 16, however, it is distributed to the postal customers to create an awareness of the event and perhaps raise funds for the day specific. For the stamp at issue here, although the book says was issued on October 18, 1981, there is no evidence presented by AAO or USCIS (the latter never raised this issue) to support it was actually distributed to postal customers on October 16, 1981. Such stamps are marked with date specific, however, are issued/distributed in advance of the corresponding dates.

The August 4, 1981 letter carrying a commemorative stamp with issue date of October 16, 1981 is not unusual in the context of the foregoing. Additionally, the Brazilian postal authority had in fact recognized the stamp and cancelled it by processing the envelope and forwarding it the US Postal Service for delivering it to the addressee. If it was mailed in Brazil and delivered in the United States, it was then a good stamp for the August 4, 1981 letter. The said envelopes are in evidence and there has been no fraud or misrepresentation in submitting them into evidence.

Counsel contends that USCIS has ignored entry stamps in the applicant's Brazilian passport and original airline tickets that he presented as evidence to an USCIS officer at his interview on May 17, 2004. It is noted that the record contains multiple copies of pages of the applicant's Brazilian passport issued on January 7, 1981 that appear to have been placed in the record when the applicant submitted his original Form I-687 application on February 23, 1993 at the New York district office and again when he appeared for an interview regarding his Form I-485 LIFE Act application on May 17, 2004 at the [REDACTED] office. The pages of the applicant's Brazilian passport issued on January 7, 1981 contain a stamp reflecting that the applicant was issued a B-2 visitor's visa at the U.S. Consulate in [REDACTED], Brazil on January 12, 1981 with multiple entries allowed through January 12, 1985. The pages of the passport also contain stamps reflecting the applicant's departure from Brazil on January 19, 1981, his admission to the United States at [REDACTED] on January 19, 1981, his admission to Brazil on December 18, 1982, his departure from Brazil on January 16, 1983, and his admission to the United States at [REDACTED] on January 17, 1983. Although the stamps in the applicant's Brazilian passport issued on January 7, 1981 are evidence of the applicant's admissions to this country on January 19, 1981 and January 17, 1983, these stamps are not sufficient evidence of the applicant's continuous unlawful residence in the United States between these dates. The AAO acknowledges that the record does not contain copies of the applicant's original airline tickets. While counsel indicates that the applicant still retains these original documents, neither the applicant nor counsel provides copies of the original airline tickets. Even if the record contained copies of these airline tickets, such tickets would be evidence of trips the applicant had taken rather than direct evidence of the applicant's continuous unlawful residence in this country for the period in question.

Counsel advances the argument that the applicant met his burden of proof in establishing his continuous residence in the United States for the requisite period and establishing his eligibility for permanent residence under the provisions of the LIFE Act, and that the burden had shifted back to USCIS to disprove the applicant's claim of residence. The question of whether the applicant has met his initial burden of proof is not at issue, but rather the issue is whether the applicant has met his secondary burden of proof regarding the overcoming of the derogatory information relative to his case. Specifically, the fact that an envelope postmarked August 4, 1981 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. Upon a showing that the inference from the applicant's evidence is not reasonable, the burden of proof then shifts to the applicant to overcome this derogatory information.

Counsel objects to the fact that the AAO has raised this new issue at this point in the proceedings as this was not a basis of the director's denial of the Form I-485 LIFE Act application. However, counsel's objection is not persuasive as an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In this particular case, the AAO became aware of the derogatory information regarding the envelope postmarked August 4, 1981 during the adjudication of the applicant's appeal. The AAO then issued a notice to the applicant informing the applicant of the derogatory information and the AAO's intent to dismiss his appeal based upon this derogatory information. The pertinent regulation at 8 C.F.R. § 103.2(b)(16) states the following:

Inspection of evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) Determination of statutory eligibility. A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) Discretionary determination. Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such

information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) Classified information. An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

Clearly, the language of the regulation does not mandate that USCIS provide an applicant or petitioner with a copy of a document containing derogatory information used to deny an application or petition. Rather, the regulation requires that an applicant or petitioner be advised of such derogatory information and offered an opportunity to rebut the information and present information in his or her own behalf before the decision is rendered. This is the procedure that has been utilized in the instant case as the AAO issued a notice on May 10, 2013 to the applicant specifically informing him of the derogatory information relating to the envelope postmarked August 4, 1981 and the corresponding page number and catalogue number of the stamp on this envelope as listed in Volume 1 of the *2013 Scott Standard Postage Stamp Catalogue*.

Counsel seemingly questions the authority of the *Scott Standard Postage Stamp Catalogue* and the accuracy of the listed dates of issue for certain stamps in the *Scott Standard Postage Stamp Catalogue*. 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 publically accessible 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.

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 and day 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 2013 *Scott Standard Postage Stamp Catalogue* lists the specific day, month, and year for the official first day of issue rather than a general year of issue date for the Brazilian stamp contained on the postmarked envelope cited above and does not contain any footnote indicating such stamp was 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 end 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.

Counsel asserts that Christmas stamps are not issued on Christmas day but are instead issued weeks or months in advance to generate an awareness of the upcoming event or day. While counsel is correct in noting that Christmas stamps are not issued on Christmas day but are instead issued weeks or months in advance, the reason for the early issue is so that Christmas cards and gifts can be mailed bearing postage stamps which celebrate the Christmas season rather than an attempt to generate an awareness of Christmas day.

Counsel's statement that Eid stamps are distributed in January and February to commemorate the Eid Day which is the third week of March every year is erroneous. A review of the publically accessible website at www.timeanddate.com reveals that Eid-al-Adha is the Islamic festival commemorating the willingness of Ibrahim (also known as Abraham) to follow Allah's command to sacrifice his son Ishmael and Eid-al-Fitr is a festival that begins the first day of the Islamic month of Shawwal and marks the end of Ramadan, which is the month of fasting and prayer. The website notes that regional customs or moon sightings may cause a variation of the date for Islamic holidays because the Islamic calendar is lunar and the days begin at sunset which

may result in a one-day error when the New Moon is first seen. Eid-al-Adha was last celebrated in the month of March in 1999, 2000, and 2001, and will be celebrated in the month of October in 2013 and 2014. Eid-al-Fitr was last celebrated in the month of March in 1993, 1994, and 1995, and will be celebrated in the month of August in 2013 and the month of July in 2014. In addition, a review of Volume 1 of the *2013 Scott Standard Postage Stamp Catalogue* reveals that the United States has issued six stamps (page 111 with catalogue number 3532 A2734, page 114 with catalogue number 3674 A2734, page 125 with catalogue number 4117 A2734, page 128 with catalogue number 4202 A2734, page 132 with catalogue number 4531 A2734, and page number 134 with catalogue number 4416 A2734) commemorating Eid Day and that these stamps were issued on September 1, 2001, October 10, 2002, October 6, 2006, and September 28, 2007, September 23, 2008, and September 3, 2009, respectively.

Counsel declares that Independence Day stamps in the United States are not issued on July 4 every year although they have an issue date of July 4 but instead are sold at the U.S. Postal Offices in May or June. However, counsel's declaration is not corroborated by information contained in Volume 1 of the *2013 Scott Standard Postage Stamp Catalogue*. A review of Volume 1 of the *2013 Scott Standard Postage Stamp Catalogue* reveals that the United States has issued a variety of stamps ranging in subject from historical American flags, the U.S. Flag, colonial American craftsmen, Independence Hall, the Declaration of Independence, the celebration of the American Bicentennial, uniforms of American Revolutionary War soldiers, a variety of Revolutionary War battles, paintings such as "The Spirit of '76," "Washington Reviewing His Ragged Army at Valley Forge," "Washington Crossing the Delaware," "The Declaration of Independence," and "The Surrender of Lord Cornwallis at Yorktown," Benjamin Franklin, George Washington, the Marquis de Lafayette, occupations of Americans that aided the war effort in the Revolutionary War, the Articles of Confederation, and the centennial of the Statue of Liberty, in the months prior to July 4, on July 4 itself, and in months subsequent to July 4.

Counsel contends that the Brazilian stamp commemorating October 16 as Wood Food Day was actually issued on an earlier date than the issue date listed in Volume 1 of the *2013 Scott Standard Postage Stamp Catalogue* for the stamp of October 16, 1981. However, counsel fails to provide any independent evidence to corroborate the claim that the stamp in question was issued on an earlier date. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the *2013 Scott Standard Postage Stamp Catalogue* contains other examples of countries issuing stamps commemorating Word Food Day on October 16, with one single

exception. A review of Volume 3 of the *2013 Scott Standard Postage Stamp Catalogue* reveals Hungary issued a stamp with a value of two forints that commemorates the celebration of World Food Day, the founding of the Food and Agricultural Organization of the United Nations on October 16, 1945. The stamp contains a stylized illustration of two hands uplifting the symbol or the Food and Agricultural Organization of the United Nations. The stamp is listed at page 843 of Volume 3 of the *2013 Scott Standard Postage Stamp Catalogue* as catalogue number 2704 A689. The catalogue lists this stamp's date of issue as October 16, 1981. A review of Volume 4 of the *2013 Scott Standard Postage Stamp Catalogue* reveals Kenya issued a series of stamps with values ranging from fourteen schillings to forty schillings that commemorate the celebration of World Food Day, the founding of the Food and Agricultural Organization of the United Nations on October 16, 1945. The stamps contain a variety of stylized illustration relating to food production. The stamps are listed at page 198 of Volume 4 of the *2013 Scott Standard Postage Stamp Catalogue* as catalogue numbers 660 A125, 661 A125, 662 A125, 663 A125, and 664 A125. The catalogue lists the issue date for all of these stamps as October 16, 1995. A review of Volume 5 of the *2013 Scott Standard Postage Stamp Catalogue* reveals Pakistan issued a stamp with a value of one rupee that commemorates the celebration of World Food Day, the founding of the Food and Agricultural Organization of the United Nations on October 16, 1945. The stamp contains a stylized illustration of stalk of grain with the symbol of the Food and Agricultural Organization of the United Nations in the upper right corner. The stamp is listed at page 451 of Volume 5 of the *2013 Scott Standard Postage Stamp Catalogue* as catalogue number 720 A360. The catalogue lists this stamp's date of issue as October 16, 1989. Finally, a review of Volume 6 of the *2013 Scott Standard Postage Stamp Catalogue* reveals an exception in that Zambia issued a series of stamps with values ranging from thirty-five ngwee to twenty kwacha that commemorate the celebration of World Food Day, the founding of the Food and Agricultural Organization of the United Nations on October 16, 1945. The stamps contain illustrations of breeds of cattle with the symbol of Food and Agricultural Organization of the United Nations in either the upper left corner or the upper right corner. These stamps are listed at page 1547 of Volume 6 of the *2013 Scott Standard Postage Stamp Catalogue* as catalogue numbers 418 A94, 419 A94, 420 A94, and 421 A94. The catalogue lists the date of issue for all of these stamps as October 1, 1987.

Counsel's assertion that the Brazilian postal authority had in fact recognized the stamp as valid and cancelled it by processing the envelope and forwarding it the U.S. Postal Service for delivery to the applicant is not persuasive. The fraud perpetrated in the instant case concerns the production and placement of a fraudulent postmark on the envelope in question rather than the authenticity of the actual postage stamp on the envelope postmarked August 4, 1981.

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 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).

Although not noted by the director in the denial of the application, the next issue to be examined is whether the applicant's criminal history renders him either inadmissible with a waiver being available or inadmissible with no waiver. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, at 1043, *aff'd*, 345 F.3d 683; *see also Soltane v. DOJ*, 381 F.3d 143, at 145 (AAO's *de novo* authority is well recognized by the federal courts).

The record contains court disposition information that had been electronically reported by the sentencing court, the Municipal Court of [REDACTED] which reflects that the applicant was arrested on October 10, 1993 for a criminal violation of the New Jersey Statutes Title 2C, The New Jersey Code of Criminal Justice, section 2C:35-10A(4), Possession of fifty grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person. The applicant was granted a conditional discharge on January 4, 1995, after successfully completing a one year diversion program and payment of \$645.00.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act (formerly section 212(a)(23) of the Act).

A waiver of grounds of inadmissibility is not available to an alien found to be inadmissible under specifically enumerated grounds of section 212(a) of the Act including section 212(a)(2)(A)(i)(II) of the Act. Section 210(c)(2)(B)(ii) of the Act, Section 245A(d)(2)(B)(ii) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii).

The sole exception allowing for the waiver of the ground of inadmissibility for an alien found inadmissible under Section 212(a)(2)(A)(i)(II) of the Act as a result of a conviction involving a controlled substance is that available to an alien convicted of "...a single offense of simple possession of 30 grams or less of marijuana...." Section 210(c)(2)(B)(ii)(III) of the Act, Section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii).

Nevertheless, it cannot be determined whether the applicant is either inadmissible with a waiver being available or inadmissible with no waiver as a result of his criminal violation involving a controlled substance. The record does contain any evidence demonstrating which controlled substance the applicant had in his possession and the specific weight of the controlled substance in his possession that resulted in his criminal violation of the New Jersey Code of Criminal Justice section 2C:35-10A(4). An alien applying for adjustment of status has the burden of proving 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 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden in that he has failed to establish he is admissible under the provisions of section 245A of the Act. For this additional reason, the application may not be approved.

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