



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE: [Redacted]

Office: Dallas, Texas

Date: AUG 11 2004

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. The file has been returned to the Dallas District Office. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC INFORMATION

Identifying information is
prevented from being disseminated
for reasons of national security.

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director concluded that the applicant failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status from then through May 4, 1988, and failed to provide any evidence that he resided in the United States during 1987 and 1988.

On appeal the applicant has submitted a letter from the owner of Lynn Smith Auto Sales in Fort Worth, Texas, stating that the applicant worked part-time for the company from April 1987 to September 1988.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“CSS”), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“LULAC”), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (“Zambrano”). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The Missouri Service Center determined that the applicant filed a timely written claim for class membership in CSS.

An applicant for permanent resident status under section 1104 of the LIFE Act must also establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

With respect to the standard of proof, 8 C.F.R. § 245a.12(e) provides that the applicant “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.” The preponderance of evidence standard is explained as follows in *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm. 1989): “when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true.” Preponderance of the evidence has also been defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th ed. 1979).

In her decision the district director stated that the applicant failed to prove by a preponderance of the evidence that he resided in the United States from before January 1, 1982 through May 4, 1988, but she neglected to analyze the evidence in the file and explain how she reached that determination. The district director also stated that the applicant “failed to provide any evidence” that he had resided in the United States in 1987 and 1988, which is clearly incorrect because the applicant did, in fact, provide some evidence of U.S. residency during those two years. The AAO has reviewed the evidence of record, including the evidence submitted on appeal, and comes to a different conclusion on the issue of the applicant’s residence in the United States.

In the LIFE application (Form I-485) he filed in March 2002 the applicant stated that he first entered the United States from his native Mexico on July 7, 1981, and that he departed the country twice during the ensuing seven years. The first time was June-August 1982 to visit his wife in Mexico upon the birth of their second child and the second time was March-April 1988 due to the death of his grandmother in Mexico. Evidence of the applicant’s residence in the United States during the years 1981-1988, which included

documents submitted in connection with the applicant's CSS class membership claim in the early 1990s, consisted of the following materials:

- (1) A photocopied payroll check issued to the applicant by the [REDACTED] in Muskogee, Oklahoma, dated September 14, 1983.
- (2) A series of pay statements, in photocopy, issued to the applicant between May and December 1985 by [REDACTED] of Fort Worth, Texas, by [REDACTED] of Dallas, Texas, and by Casa [REDACTED] of Dallas, Texas.
- (3) A sworn statement by [REDACTED] of [REDACTED] Texas, dated October 31, 1990, declaring that he had employed the applicant from July 1981 to January 1986 in his painting business. "I am a house and business painter and I employed [the applicant] . . . as my assistant, I trained him and he learned to do a professional painting job." [REDACTED] stated that the applicant left his employ in January 1986 and moved to Fort Worth, Texas. He also stated that the applicant "lived in our home and I charged him \$60.00 every two weeks."
- (4) A sworn statement by [REDACTED] of Haltom City, Texas, dated November 25, 1990, declaring that she had known the applicant since March 1986, that "he and I dated and live[d] together for awhile . . . in my trailer," that the applicant "help[ed] me pay rent but the payments are in my name," and that she and the applicant "also work[ed] at [REDACTED] [in 1990] and while he worked there he and I use[d] to ride together."
- (5) A sworn statement by [REDACTED] of Bedford, Texas, dated November 25, 1990, declaring that "I have known [the applicant] since June 1986. He did odd jobs in my home and I paid him for painting my house."

The applicant subsequently submitted the following additional evidence of his U.S. residence in the 1980s:

- (6) A letter dated February 25, 2003 from [REDACTED] of Houston, Texas (who also furnished the earlier sworn statement of October 31, 1990), confirming that his company, [REDACTED], previously known as [REDACTED] "employed [the applicant] during the period July 1981 to January 1986." [REDACTED] stated that the applicant "was paid \$4.50 as a painter's helper" and "was also residing with me at my home."
- (7) A sworn statement dated March 17, 2003 from [REDACTED] of Mesquite, Texas, declaring that "I have known [the applicant] since February 1986. [His] family and my family resided in the same apartment complex on Junius in Dallas, Texas . . . and . . . we saw one another on a daily basis. We continued to reside at this same address until December 1988. At that time [the applicant's] family moved away."

All of the foregoing materials were in the record before the district director issued her Notice of Intent to Deny in June 2003 and her decision denying the application in August 2003. Yet none of these documents was even mentioned, much less analyzed, in the decision. Thus, it is unclear why the district director found that the applicant failed to establish "by a preponderance of the evidence" that he resided in the United States from before January 1, 1982 through May 4, 1988. Moreover, the district director's determination that the applicant "failed to provide *any* evidence" (emphasis added) of his U.S. residence in 1987 and 1988 is refuted by the sworn statements of [REDACTED] (documents 4, 5 and 7 above) which, together with the two Form I-687 applications the applicant submitted in connection with his CSS class membership claim in November 1990 and September 1993, do provide some evidence of the applicant's residence in the United States during those years.

Evidence of the applicant's U.S. residence in 1987-88 has been supplemented on appeal by a letter dated October 2, 2003 from [REDACTED] owner of [REDACTED] Auto Parts in Fort Worth, Texas, who verified that the applicant worked for him and "was paid contract labor by this company from the period of April 1987 to September 1988." As described by [REDACTED] the applicant "did general labor and odd jobs. His hourly pay was \$5.00 per hour at 20 to 35 hours per week. His residence at that time was [REDACTED]

It must be pointed out that some of the information provided in the above documentation conflicts with, or is omitted from, the I-687 applications the applicant filed in 1990 and 1993. On those forms, for example, the applicant did not include in the list of his U.S. employers any of the four companies from whom he received paychecks and pay statements in 1983 and 1985. The only employer listed on the I-687s from July 1981 to January 1986 was [REDACTED] (the painter). Nor did the applicant [REDACTED] as an employer in 1987-88. On his I-687s the applicant listed New York Submarine as his employer from March 1986 to May 1988, followed by [REDACTED] from June 1988 to July 1990 (both in Fort Worth, Texas), then [REDACTED]. No mention was made of the "odd jobs" and "house painting" he did for [REDACTED] beginning in June 1986 (sworn statement of November 25, 1990). According to sworn statements submitted in November 1990 by the proprietors of New York Submarine and [REDACTED] (prepared in the same format and typeface), the applicant worked at the two restaurants simultaneously (May-June 1988 to July 1990), though the applicant stated in his I-687s that he was employed at New York Submarine during an earlier time period, March 1986 to May 1988. The employment dates in the New York Submarine statement of November 1990 may simply have been a careless error, though they have not been specifically identified as such by the applicant. Despite this contradiction and the other ambiguous information provided in the foregoing documentation, it seems evident from the record is that the applicant worked at multiple, sometimes overlapping jobs during his first decade in the United States, and that his tenure with some of his employers was rather short. The omission of some of his jobs from the I-687 applications would appear to have been a matter of convenience, rather than an attempt to mislead, and does not detract from the applicant's fundamental contention that he was continuously employed in the United States from mid-1981 onward.

With regard to the applicant's continuous residence in the United States during the 1980s, the evidence is confusing as to exactly where the applicant lived year by year. For example, though the applicant asserted in his I-687s that he resided at [REDACTED] Houston, Texas, from July 1981 to January 1986 (the address of his employer at the time, [REDACTED], the record also indicates that the applicant was employed during part of that time by companies located hundreds of miles away in Dallas, Fort Worth, and Muskogee, Oklahoma. In addition, the addresses listed in the I-687s for 1986 to 1990 do not include two addresses mentioned in the supporting documentation. According to [REDACTED] sworn statement of March 17, 2003), she met the applicant in February 1986 and they lived "in the same apartment complex on Junius in Dallas, Texas . . . until December 1988." That address conflicts with the information provided by [REDACTED] (letter of October 2, 2003) that the applicant's address between April 1987 and September 1988 (the period he worked [REDACTED]) was [REDACTED] in Dallas, Texas. In both of his I-687s the applicant listed [REDACTED] Haltom City, Texas, as his address from March 1986 to May 1988, followed by [REDACTED], Texas from June 1988 to December 1990. The Haltom City address comports with the information provided by [REDACTED] (sworn statement of November 25, 1990), who indicated that she met the applicant in March 1986 and had lived with him awhile in her trailer. [REDACTED] did not state how long the applicant lived with her, however, and her statement does not exclude the possibility that the applicant could have lived at one or both of the above addresses in Dallas (though not in the exact time frames indicated) before moving on to the Hurst, Texas address sometime in 1988. Despite the discrepancies concerning the applicant's exact addresses during the years 1981-1988, the evidence is considerable that he did reside in the United States throughout that time period. In the AAO's view, the inconsistencies in the

record do not fatally undermine the applicant's fundamental contention that he resided continuously in the United States from mid-1981 onward.

One of the requirements of "continuous residence in the United States" is that the applicant not have departed the country for any one period longer than 45 days or an aggregate of more than 180 days between January 1, 1982 and May 4, 1988, unless the applicant can establish that due to emergent reasons his or her return to the United States could not be accomplished within the allowed time period. *See* 8 C.F.R. § 245a.15(c)(1). As previously noted, the applicant stated in his LIFE application that he was absent from the United States on two occasions during the applicable time period, the first time in June-August 1982 and the second time in March-April 1988. In his earlier I-687 applications the applicant gave slightly different time periods for the first absence in 1982. In the initial I-687, filed in 1990, the applicant indicated that this absence was in the time period July-September 1982. In the subsequent I-687, filed in 1993, the applicant indicated that the subject absence was in July-August 1982. Thus, it is unclear whether the first absence spanned a one-month or a two-month period. In either case, the applicant could well have returned to the United States within the 45-day limit for any single absence (for example, if the absence extended from the latter half of June to the first half of August). Moreover, it is quite clear that the applicant did not exceed the allowable aggregate of 180 days absent from the United States.

Viewing the record in its entirety, and based on the foregoing analysis of the evidence, the AAO finds it more probable than not that the applicant fulfilled the statutory and regulatory criteria of residing in the United States unlawfully and continuously from before January 1, 1982 through May 4, 1988, and was not absent the country during that time period on any single occasion for more than 45 days or for an aggregate of more than 180 days. The AAO determines, therefore, that the applicant has met his burden of proof, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in the United States in an unlawful status continuously through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.