



U.S. Citizenship
and Immigration
Services

22

[REDACTED]

FILE:

[REDACTED]

Office: Dallas, Texas

Date:

AUG 11 2011

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

FOR IMMEDIATE RELEASE
WASHINGTON, D.C. [illegible]
[illegible]

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 that he entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status through May 4, 1988. In particular, the district director found that the applicant “failed to provide evidence of [his] presence during the required time period from January 1, 1982 through 1984.”

On appeal counsel asserts that the affidavits in the record “clearly establish the applicant’s residence and physical presence [in the United States] from 1981 to May 5, 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 record establishes that the applicant filed a timely 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).

8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] 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. (Emphasis added.) . . . The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.” As explained in *Matter of E-M-*, *supra*, “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.” 20 I&N Dec. at 80. 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).

The applicant asserts that he entered the United States by wading across the Rio Grande between Laredo and Eagle Pass, Texas, in November 1981. All of the evidence he submitted to show his U.S. residence during the 1980s is in the form of sworn affidavits. Ten of the affidavits date from June 1990 and were filed with the Immigration and Naturalization Service (INS) in conjunction with the applicant’s claim for class membership in CSS. Two affidavits were from former employers attesting to the applicant’s employment in automobile-related businesses in Richardson, Texas from February 1982 to March 1987 and from July 1987 to August 1988. Four affidavits were from former landlords or co-tenants attesting to the applicant’s residence at four different addresses in Dallas, Texas between November 1981 and August 1989. The remaining four affidavits, in identical format, were from friends and/or co-workers attesting that they had known the applicant since November 1981 (two), August 1982, and February 1983, respectively. (Three of the affiants prepared updated statements in January 2003, but none contains any substantive additions to the original statements.)

Though all of the foregoing affidavits were cryptic and contained no more than basic information about the affiants' relationship with and knowledge about the applicant, the district director was apparently satisfied that the affidavits were sufficient to establish the applicant's U.S. residence during the years 1985-1988. This is evident by implication in the amended notice she issued on September 13, 2003, advising the applicant of her intent to deny his application, as well as the subsequent decision. In her amended notice the district director referred to the applicant's interview with an INS (now Citizenship and Immigration Services, or CIS) officer on January 21, 2003, during which additional evidence was requested of the applicant's U.S. "presence between January 1, 1982 through 1984." The district director noted that the applicant had submitted "an updated work letter" from his first employer in Texas stating that the applicant had worked for him from February 1982 through March 1987, but that in a telephone conversation with a CIS officer on April 8, 2003 the former employer stated that the subject business did not start up until 1984. The amended notice did not indicate any additional evidence of U.S. residence was needed for the years 1985-1988. In her decision denying the application the district director stated that the applicant had not submitted any further documentation in the 30 days allotted "to provide additional evidence proving [his] presence" in the United States from the beginning of 1982 through the end of 1984. The years 1985-1988 were not discussed in the decision.

A review of the ten original affidavits indicates that the amount of information provided about the years 1982-1984 is about the same as that provided for the years 1985-1988. [redacted] stated that the applicant "worked for me at [redacted] in Richardson, Texas, from February 1982 until March 1987. [The applicant] worked as an auto detailer, did a good job. He was always prompt and efficient." [redacted] and writing on the company's letterhead, stated that the applicant "worked for me at [redacted], Inc. in Richardson, Texas, from July 1987 until it closed in August of 1988. He then continued working for me at Taraco, Inc. from August of 1988 until September of 1989. He was a good and faithful employee all the time he worked for me." As for the affidavits concerning the applicant's places of residence, the first states that the applicant lived at [redacted] "since November 1981 until the year 1984. He live[d] with other people and they were good tenant[s]." The letter is signed by [redacted] is typed at the top of the document. It is unclear from the form and content of the letter whether [redacted] is a tenant or the manager of the apartments. The second affidavit was written in longhand by [redacted] who states that she met the applicant in May 1984 and that "I lived in [redacted] in Dallas, Texas, in 1984, and I knew [the applicant] lived at [redacted] from November 1984 to October 1985. The third affidavit is from [redacted] Manager of Oak Terrace Apartments at [redacted] who stated that "[o]ur records . . . show that [the applicant] resided at [redacted] from October 1985 to September 1987." The fourth affidavit is from [redacted] who stated that "I know my friend [the applicant] when he came to live with me at this address: [redacted] He is [a] good person, honest and responsible. He paid me rent" from October 1987 to August 1989. The last four affidavits, identical in format, provide little additional information. Two are from individuals who identify themselves and "friends" and "co-workers" of the applicant and who state in boilerplate language that they "know it to be a fact that [the applicant] has been residing continuously in the United States from November 1981 to present." Under "additional comments" one of the affiants stated that "I have worked with [the applicant] since 1981" and the other stated that the applicant "is a good co-worker." The last two affiants inserted August 1982 and February 1983, respectively, into the boilerplate language quoted above. Under "additional comments" one of the affiants stated that "I have known [the applicant] for 7 ½ years" and the other stated that "I have worked with [the applicant] on two different occasions."

The district director did not explain why she considered the evidence of the applicant's continuous U.S. residence insufficient for the years 1982-1984, but apparently satisfactory for the years 1985-1988. There is little if any difference, qualitatively or quantitatively, in the information provided for those two time periods. Yet the district director did not seek additional evidence of the applicant's U.S. residence from 1985 to 1988. Reference is made by the district director to the conflicting information provided by [REDACTED] the applicant's first employer, as to when his business started. In his 1990 affidavit [REDACTED] stated that the applicant began working for him in February 1982. (That information was repeated in a new sworn statement dated January 23, 2003.) In his April 2003 telephone interview, however, [REDACTED] apparently stated that his business did not get started until 1984. This information conflicts not only with the updated statement [REDACTED] signed in January 2003, but also with his original sworn statement in 1990. Considering the fact that the telephone interview was discussing events of twenty years past, and the fact that the original sworn statement of 1990 was much more contemporaneous to the events described, the AAO considers the written information provided by [REDACTED] in 1990 to be more reliable than the telephonic information he provided thirteen years later.

Viewing the evidence as a whole, the AAO considers it to be at the low end of acceptability. The affidavits are numerous, however, and the cumulative information they provide cannot be dismissed as insignificant. The dates and addresses of the applicant's U.S. employers and residences during the 1980s, as related by the affiants, accord exactly with the information provided by the applicant in his Form I-687. Though the decision is a close one, the AAO is persuaded that the applicant has met his burden of proof, by a preponderance of the evidence (*i.e.*, it is more probable than not), that he entered the United States before January 1, 1982 and resided in the United States continuously in an unlawful status through May 4, 1988, as required by section 1104(c)(2)(B)(i) of the LIFE Act.

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.