



U.S. Citizenship
and Immigration
Services

22

[REDACTED]

FILE:

[REDACTED]

Office: Dallas, Texas

Date:

AUG 31 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:

Self-represented

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

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prevent clearly unwarranted
invasion of personal privacy

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 dismissed.

The district director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988. Specifically, the district director declared that the applicant "failed to provide evidence" of his presence in the United States from "prior to January 1, 1982 through 1983."

On appeal the applicant resubmitted some evidence that was already in the record, including a sworn statement and some "receipts of [redacted] who was my roommate at that time," which the applicant asserts "shows proof of my presence in the U.S. since before 1982 to 1983."

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 written claim for class membership in CSS in 1990.

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). The "continuous unlawful residence" requirement is further defined in 8 C.F.R. § 245a.15(c)(1), which provides as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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. . . . 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-*, 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).

When the applicant filed his claim for class membership in CSS with the Immigration and Naturalization Service (INS) in 1990, he stated on his accompanying application for temporary resident status under section 245A of the INA (Form I-687) that he had resided at three different addresses since entering United States, the first of which was at 5303 Gurley, in Dallas, Texas, from May 1983 to May 1985. This time frame was confirmed in the Form for Determination of Class Membership in CSS *v. Meese*, dated June 28, 1990, which the applicant also submitted at the time of his CSS class membership claim. In that form the applicant stated

that he first entered the United States in May 1983. On his I-687 form the applicant also declared that he had been absent from the United States "to visit my family in Mexico" from December 1986 to March 1987.

Not until he filed his LIFE application (Form I-485) in February 2002 did the applicant assert that he first entered the United States as early as 1981. Two sworn statements were submitted with the LIFE application, both from residents of Dallas, Texas and both dated January 23, 2002. One was from [REDACTED] who declared that "I have known [the applicant] since October 1981" and that he had been in continuous contact with the applicant ever since. The other was from [REDACTED] who declared that "I have known [the applicant] since November 1981," that the applicant "has spent time at my house with my family," and that he has been in continuous contact with the applicant over the years. The record was later supplemented by another sworn statement, dated February 14, 2003, from [REDACTED] also of Dallas, Texas [REDACTED] stated that he had known the applicant "since we were infants," that they met up again in the United States, and that the applicant had lived with him at three different addresses in Dallas during the 1980s, the first of which was a [REDACTED] from September 10, 1981 to March 6, 1985. According to Mr. [REDACTED] he and the applicant "paid all the bills together. We bought some furniture, and we had a bank account . . . we bought a car [a] Datsun 1977." [REDACTED] asserted that all bills and receipts were in his name because the applicant was illegal. Photocopies were submitted of myriad bills, receipts, and bank records from the years 1982 to 1988, all in the name of Adrian Torres. No further evidence was submitted by the applicant in response to the district director's notice of intent to deny, or on appeal.

In the AAO's view, the three sworn statements discussed above lack sufficient credibility to establish that the applicant resided in the United States any time prior to May 1983. The two statements from January 2002 offer only the barest information about the applicant and do not even assert that the applicant has been a continuous resident of the United States since 1981. The statement from [REDACTED] in February 2003 is more substantial. But the time frame he gives for the applicant's residence with him at 5303 Gurley in Dallas – September 1981 to March 1985 – conflicts with the information the applicant himself produced in 1990 on his Form I-687, in which he stated that he began residing at that address in May 1983, and on his Form for Determination of Class Membership in *CSS v. Meese*, in which he stated that he first entered the United States in May 1983. The AAO also notes, with respect to the photocopied bills, receipts and bank records in the name of [REDACTED] that none of them list the address of Mr. [REDACTED] as 5303 Gurley in Dallas, where he claims to have resided with the applicant between 1981 and 1985.

As previously mentioned, the applicant stated on his I-687 form in 1990 that he was absent from the United States "to visit my family in Mexico" from December 1986 to March 1987. That time span – approximately three months – exceeded the 45-day maximum for any single absence from the United States, as specified in 8 C.F.R. § 245a.15(c)(1). There is no evidence that the applicant's return to the United States was delayed by "emergent reasons" within the meaning of the regulation – *i.e.*, circumstances that were unforeseen and outside of the applicant's control. Accordingly, the applicant's three-month stay in Mexico from December 1986 to March 1987 interrupted his continuous residence in the United States.

The applicant changed his story in connection with his LIFE application and now asserts that he was absent from the United States for just eleven days – December 22, 1986 to January 2, 1987 – on the "family visit" in Mexico. He has submitted no evidence that these amended dates are accurate, however, and the AAO views the original information he provided in 1990 – which was much closer in time to the events described – as more credible.

Viewing the record in its entirety, the AAO determines that the applicant has failed to meet his burden of proof. He has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in an unlawful status in the United States continuously from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B)(i) of the LIFE Act, 8 C.F.R. § 245a.11(b), and 8 C.F.R. § 245a.15(c)(1).



For the reasons discussed above, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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