



U.S. Citizenship  
and Immigration  
Services

12

[Redacted]

FILE:

[Redacted]

Office: San Francisco, California

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the San Francisco 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 San Francisco, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded that the documentation of record, which consisted mostly of affidavits, failed to establish that the applicant (1) 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 (2) was continuously physically present in the United States between November 6, 1986 and May 4, 1988.

On appeal counsel asserts that the applicant has been present in the United States illegally since May 1981, but that due to his illegal status "it was not possible for the applicant to procure any legal document[s] like DMV license, tax record[s], pay stubs and other legal documents." Counsel asserts that the affidavits previously submitted are the best available evidence of the applicant's presence in the United States from 1981 onward, and cites various legal authority that they should be considered in deciding this application for LIFE legalization.

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). In addition, the applicant must establish that he or she was continuously physically present in the United States from November 6, 1986 to May 4, 1988. See section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c).

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." The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are "relevant documents" which warrant consideration in legalization proceedings. *Id.* at 82-83. 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 (5<sup>th</sup> ed. 1979).

The district director found that the applicant failed to meet his burden of proof regarding his continuous residence and continuous physical presence in the United States during the required time periods. In reviewing the documentation of record, the district director declared that "the affidavits you have submitted are of no probative value. The affidavits could not be corroborated with any other credible evidence . . ."

The district director went on to declare that “[y]our LIFE Legalization residency requirement could not be established with affidavits alone.” The content of the affidavits was not discussed, however, which appears to indicate that the district director viewed affidavits unsupported by other documentation as, *ipso facto*, insufficient evidence to establish the applicant’s continuous U.S. residence and physical presence during the required time periods. As a matter of law, though, affidavits need not necessarily be supplemented by other evidence to have probative value. See *Matter of E-M-*, *supra*. Rather, the probative value of affidavits must be determined based on an examination of the individual documents and their cumulative evidentiary weight. The LIFE Act regulations specifically provide that “[t]he sufficiency of *all evidence* produced by the applicant will be judged *according to its probative value and credibility*.” 8 C.F.R. § 245a.12(f) (emphasis added.). As counsel correctly argued in its appeal brief, therefore, the district director should have examined the probative value and credibility of the affidavits submitted by the applicant in reaching his decision.

When the applicant filed his claim for class membership in CSS in 1990, he stated on his accompanying Form I-687 (dated April 18, 1990) that he had come to the United States in May 1981 and resided continuously from then on at 11723 (D) [redacted] California. He stated that he had departed the United States once to visit his family in India from June 10, 1987 to July 28, 1987. In support of that statement he submitted a sworn affidavit from [redacted] of Turlock, California, dated April 17, 1990, declaring that “I gave [the applicant] a ride near the border on June 10, 1987. [The applicant] traveled to India. Then on July 28, 1987 I picked him up in San Ysidro, California.” In support of his LIFE application (Form I-485), filed in August 2001, the applicant has submitted the following additional affidavits:

- (1) A sworn statement by [redacted] of Stanislaus County, California, dated July 15, 2002, declaring that “I know [the applicant] since 1984. He still keep[s] in touch with me.”
- (2) A sworn statement by [redacted] the secretary of [redacted] in Livingston, California, dated November 5, 2002/December 21, 2002, declaring that he has been the secretary of the temple since 1981 and that the applicant has been a member of the temple since that year.
- (3) A sworn statement by [redacted] California, dated December 26, 2002, declaring that the applicant lived with her and her husband from 1981 to 1989, initially in Livingston, California and later [redacted]
- (4) An affidavit by [redacted] California, dated December 11, 2003, declaring that “I know [the applicant] very well. . . . I usually meet [the applicant] at Sikh temples and social functions. . . . I have known [the applicant] since 1983.”
- (5) An almost identical affidavit by [redacted] of Turlock, California, likewise dated December 11, 2003, declaring that “I know [the applicant] very well. . . . I usually meet [the applicant] at [redacted] and social functions. . . . I know [the applicant] has been living at [redacted] Stockton, California, for many years now. I have visited his home and also he has visited my home many times. . . . I have known [the applicant] since 1986.”

In the AAO’s view, the affidavits discussed above lack sufficient evidentiary weight and credibility to establish the applicant’s continuous U.S. residence from before January 1, 1982 through May 4, 1988. The affiants offer only the barest information about the applicant, and only two of them claim to have known the applicant as far back as 1981. Not one of the affiants confirmed that the applicant lived at 11723 (D) Saticoy Street in North Hollywood, California, from 1981 to 1990, much less provided any details about that alleged residence. Indeed, [redacted] declared that the applicant lived during those years with her and her husband at two completely different addresses in Livingston and Turlock, California. The AAO notes that the applicant, in a Form G-325A (Biographic Information) he submitted to the Immigration and

Naturalization Service in March 1994, restated that he lived at the North Hollywood address from 1981 to 1990 and indicated that he lived at the Turlock address from 1990 to 1993 before moving on to Livingston in April 1993. Thus, if the applicant actually lived with [REDACTED] and her husband, as alleged, it would appear to have been during the 1990s, not the 1980s, unless the applicant provided false information in his I-687 and G-325A forms about where he lived in the 1980s. The applicant has provided no explanation for this conflicting information. In sum, the AAO does not regard the affidavits in the record as persuasive evidence of the applicant's continuous U.S. residence from 1981 to 1988.

One of the requirements of "continuous residence in the United States," moreover, is that the applicant not have departed the country for any one period longer than 45 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 I-687 form that he was absent from the United States visiting his family in India from June 10 to July 28, 1987. That is a period of 48 days. There is no indication in the record that any "emergent reasons" – *i.e.*, reasons that were unforeseen and outside of the applicant's control – prevented him from returning to the United States within 45 days. Thus, even if the AAO were persuaded that the applicant entered and began residing in the United States before January 1, 1982, the 48-day trip to India in 1987 would represent an interruption of his "continuous U.S. residence" before May 4, 1988.

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 resided in the United States continuously in an unlawful status 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).

Having failed to prove his continuous U.S. residence during the requisite period, the applicant has also failed to establish, by a preponderance of the evidence, that he was continuously physically present in the United States between November 6, 1986 and May 4, 1988, as required by section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c).

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.