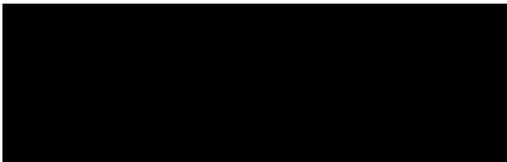




U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

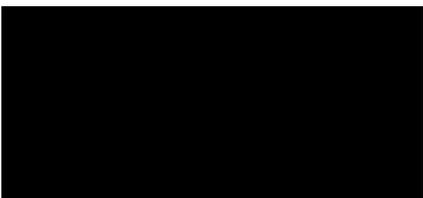
Office: Baltimore

Date: DEC 17 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:



Identifying data deleted
in accordance with 45 CFR 162.103(a)
and 162.104(a)

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. 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 COPY

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

The director concluded that the applicant failed to establish that he was present in the United States before January 1, 1982 and resided continuously in the United States in unlawful status through May 4, 1988.

On appeal, counsel states:

The District Director erred as a matter of law in determining that applicant failed to establish proof of continuous residence in the United States during the requisite period of time. The Service erred in determining that the employment letters submitted by the applicant lack probative value without the support of other documentary evidence such as payroll records, pay stubs or tax documents. Section 1104 of Public Law 106-553 clearly contemplates the submission of employment letters to establish proof of continuous residence in the U.S. Title 8, Code of Federal Regulations 245a.2(d) specifically states that letters from employers is acceptable evidence for the purpose of satisfying the LIFE Legalization requirements. The Service claims that the letters lack credibility because they can no longer verify the information contained in them due to the fact that the employer is no longer in business. However, the Service was provided the same letters in 1990 when applicant applied for temporary resident status. During that time, the Service granted applicant's temporary resident status based on the submission of these documents. Prior to approving the Form I-687 Application for Status as a Temporary Resident, the Service had the opportunity to verify the validity of the documents submitted by applicant. The Service should be barred by principles of laches to assert that now the employer is no longer available to verify information that should have been verified fourteen years previously. The fact that the Service previously approved applicant's temporary resident application also tends credence to the fact that he has already met the burden of proof with regard to establishment of continuous presence and unlawful presence. For the foregoing, we hereby request that the AAU reverse the decision of the District Director and grant any appropriate relief it deems necessary.

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 1989.

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 regulations at 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).

The director acknowledged that the applicant had submitted an employment letter from Royal Restaurant of Alexandria, Virginia claiming that he was a restaurant employer at that establishment from 1981 until 1987 and from HD Inc. of Reston, Virginia claiming that he was an employee of the corporation from 1987 until 1990. The director stated that an investigation by the Immigration and Naturalization Service (now Citizenship and Immigration Services, or CIS) was unsuccessful in verifying the applicant’s employment by those organizations. The director also discounted an employment letter from [REDACTED] because the applicant had not included her as an employer on the Form I-687 Application for Status as a Temporary Resident under section 245A of the INA allegedly signed by the applicant on November 15, 1990. The director thought that this letter may have been fabricated in the applicant’s attempt to establish his unlawful residency.

Counsel is correct that the director was provided the first two employment letters in 1990 when he submitted his application for temporary resident status. However the director did not grant the applicant’s temporary resident status based on the submission of those or any other documents. Therefore, the director may not be found negligent in handling the applicant’s claim (“barred by principles of laches”) as argued by counsel. No credence can be placed upon a previously approved application when no approval was ever given to that application.

In his order, the director noted that the applicant claimed to have resided in numerous places in Maryland and Virginia. However, he had not submitted any relevant documents such as leases, rental receipts, cancelled checks, received correspondence, etc. in support of his periods of residence. Additionally, the director noted the long periods of claimed employment and the lack of employment documentation. On appeal, the applicant has not addressed these deficiencies outlined by director in his order. 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 and 8 C.F.R. § 245a.11(b).

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.