

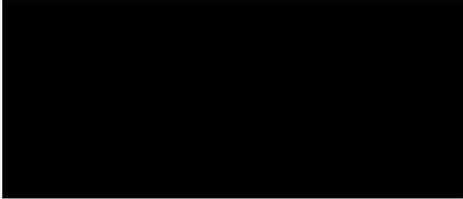
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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



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FILE:  Office: Baltimore

Date: DEC 22 2004

IN RE: Applicant: 

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:



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

**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 denial of [REDACTED] application for legal permanent residence in the U.S.A. under the "Legalization Front Desk" program was unwarranted and contrary to the evidence presented. The denial was based solely on the lack of specific written documentary evidence. Accordingly emphasis placed on the applicant's retention of documents that were obtained over twenty years ago, placed an undue burden on the applicant. On August 21, 2003, counsel indicated that he was sending a brief and/or evidence to the AAO within 30 days. However, as of this date, no further documentation or statement has been submitted into the record of proceedings. Therefore, the record is considered complete.

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 (5<sup>th</sup> ed. 1979).

When the applicant filed his claim for class membership in *LULAC* in 1990, he stated on his Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS (LULAC)* purportedly signed by him on September 9, 1990 that he first entered the United States without inspection from a ship that docked at the Port of New Orleans, Louisiana on December 4, 1980. On his I-687 form the applicant stated that he had resided continuously since his arrival in the United States at [REDACTED] in Adelphi, Maryland until 1990. As evidence of his U.S. residence since 1981 the applicant submitted the following documentation:

- (1) A sworn affidavit by [REDACTED] dated September 17, 1990, stating that the affiant resided at [REDACTED] and that he had known the applicant as a friend and that the applicant resided at [REDACTED] Maryland from December 1980 to the present.
- (2) A sworn affidavit by [REDACTED] dated September 17, 1990, stating that the affiant resided at [REDACTED] and that he had known the applicant as a friend and that the applicant resided at [REDACTED] from December 1981 to the present.
- (3) A sworn affidavit by [REDACTED] dated March 20, 2001 stating that the affiant resided at [REDACTED] in Silver Spring, Maryland, and that during the summer of 1981, the applicant helped him gain landscaping employment in Northwest Washington, DC and that in August of 1981, they played an organized soccer match somewhere in DC. He also stated that he continuously met with the applicant at different gatherings within the Washington Metro area in 1982 and 1983 and that the applicant is of good moral character.
- (4) A letter dated March 5, 2003 from [REDACTED] a manager for USCO Logistics in Gaithersburg, Maryland, stating that the applicant had worked for his company from March 11, 2002 to the present.
- (5) A letter dated August 18, 1990 from [REDACTED] in [REDACTED] stating that the applicant had worked for his company from August 13, 1985 to the present.
- (6) A letter dated May 7, 1985 from [REDACTED] in [REDACTED] informing the applicant that he was to be laid off on May 21, 1985, and thanking him for the four good years he spent working with the firm.
- (7) Two copies of his Social Security Earnings Record showing that he accumulating taxed social security earnings beginning in 1990 through 1999.
- (8) A sworn affidavit by [REDACTED] dated September 17, 1990, stating that the affiant was in his car when he drove to Mexico on June 6, 1985 through the border at El Paso. He further states that

they returned through the border on July 17, 1985 and that the “custom officers” did not inspect them when they returned to the United States.

The foregoing documentation was all the evidence the director had of the applicant’s U.S. residence during the 1980s at the time he issued his notice of intent to deny in June 2003. In that notice the director referred to the affidavits and letters and declared that “absent further documentation issued by a *credible* source, cannot serve as proof our you presence in the United States. You have failed to provide the Service with any credible, official documentation . . . that proves your continuous unlawful presence in the United States and establishes your eligibility for adjustment of status under LIFE legalization.” As a matter of law, the foregoing statements are incorrect. Affidavits and letters need not necessarily be supplemented by other evidence to have probative value. Rather, the probative value of affidavits and letters must be determined based on an examination of the individual documents and their cumulative evidentiary weight. In *Matter of E-M-*, *supra*, the Commissioner of the Immigration and Naturalization Service (INS) declared that “the absence of contemporaneous documentation is not necessarily fatal to an applicant’s claim to eligibility” and confirmed that affidavits are “relevant documents” which warrant consideration in legalization proceedings. *See* 20 I & N Dec. at 82-83. 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.*” (Emphasis added.) Thus, the director should have examined the probative value and credibility of the affidavits and letters in reaching his decision.

Those documents, however, offer very little information about the applicant’s alleged residence in New York during the 1980s. Two affidavits from September 1990 simply assert that the applicant lived at a certain address in Adelphi between 1980 (or 1981) and 1990 without explaining how either affiant met the applicant and the nature of their interaction over the years. The affiants should have been able to furnish much more information about the applicant to support his assertion that he had resided in Adelphi since December 1980. Nothing additional was forwarded on appeal.

In the AAO’s view, the four affidavits, and three employment letters, and social security documents lack sufficient credibility to establish the applicant’s continuous residence in the United States from before January 1, 1982 through May 4, 1988. The documentation offers only sparse information about the applicant, and does not fully explain exactly whom the applicant was living with, and where, at various stages during the 1980s. The AAO concludes that the evidence submitted by the applicant lacks the requisite probative value to prove, by a preponderance of the evidence, that the applicant entered the United States in December 1980 and was continuously resident in the United States through May 4, 1988, as alleged.

In his notice of intent to deny, as well as in his decision denying the application, the director listed various types of primary documentation – including, *inter alia*, “employment records (in the form of tax returns)” and social security records – that could demonstrate the applicant’s physical presence in the United States during the requisite years for LIFE legalization. The applicant submitted some of this type of documentation with his LIFE application, but it does not demonstrate that he resided in the United States prior to 1990. The applicant’s Social Security Statements, dated June 25, 2001, lists his earnings year by year from 1990 to 1999, but not before 1990. Similarly, there are employment letters commending the applicant for four years of work prior to May 1985, for his work from August 1985 through August 1990, and for his employment from March 2002 to March 2003. On

the I-687 form he filed in conjunction with his LULAC class membership claim in 1990, the applicant stated that he was employed at Fairfax Marine Products from March 1981 to May 1985 and at Loland Steel Products in Chantilly, Virginia from August 1985 to September 1990. There are no wage and tax statements in the record for those years, however, or any other additional evidence of the applicant's asserted employment from 1980 to 1990. In the AAO's view, the lack of such evidence, or any other documentation of the applicant's employment in the United States during the 1980s, casts further doubt on the applicant's claim to have resided in the United States continuously from 1981 through 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 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.