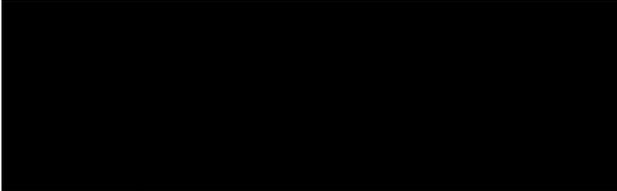


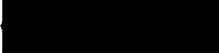


U.S. Citizenship
and Immigration
Services

PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy



L2

FILE: 

Office: Denver, Colorado

Date: 02/28/2014

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 Denver 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

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Denver, Colorado. 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 in this country continuously in unlawful status through May 4, 1988.

On appeal counsel asserts that the decision “was incorrect and not in accordance with the law.” According to counsel the applicant “has provided sufficient evidence that he was present in the USA prior to January 1, 1982 and that he resided continuously in the USA in an unlawful status.” Counsel asserts that the director misapplied the law in denying the application.

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 claim for class membership in *LULAC*.

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).

As provided in 8 C.F.R. § 245a.12(e), “[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.” Preponderance of the evidence is 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). See *Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991). See also *Matter of E – M –*, 20 I&N Dec. 77, 80 (Comm. 1989) (“[w]hen 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 inference to be drawn from the documentation provided by the applicant shall depend on the extent of the documentation, its credibility, and its amenability to verification. See 8 C.F.R. § 245a.12(e).

In his decision the district director determined that the applicant failed to establish that he was present in the United States before January 1, 1982. Aside from the applicant’s own statements that he entered the United States illegally in July 1981, the only evidence of the applicant’s presence in the United States before 1985 were some photocopies of postmarked envelopes, the earliest of which was apparently dated February 15, 1982. The district director concluded that this evidence was insufficient to establish that the applicant entered the United States before January 1, 1982 and resided in this country unlawfully and continuously in succeeding years. The district director also indicated in his decision that the applicant failed to establish that his entry into the United States on an F-1 student visa in September 1985 to attend school at Piedmont College in Georgia was an unlawful entry, as alleged, or that he subsequently violated his visa status by not attending school and working without authorization. The decision cited evidence previously provided by the applicant which contradicted all of these assertions, appeared to indicate that the F-1 visa was lawfully

obtained in 1985, and showed incontrovertibly that the applicant graduated on time from Piedmont College, in conformance with his Certificate of Eligibility for Nonimmigrant Student Status for Academic and Language Students (Form I-20A-B), issued on August 21, 1985.

In his appeal brief counsel asserts that "the record . . . contains sufficient evidence to conclude that [the applicant was present in the USA before January 1, 1982." The record includes a sworn affidavit and sworn interview testimony by the applicant that he entered the United States illegally in July 1981, as well as some photocopied envelopes addressed to the applicant in the United States during the 1980s, the earliest of which was apparently postmarked on February 15, 1982. Counsel asserts that "in the absence of other contradictory evidence that [the applicant] was not present in the USA, and absent a lack of credibility on this issue," the foregoing materials "should be "presumed to be truthful and accepted as to the date he first entered the USA." The evidence of record, particularly the photocopied envelopes, does appear to show that the applicant was in the United States in the early 1980s. But the evidence does not establish with reasonable probability that he was already in the country before January 1, 1982 and that he was in continuously unlawful status up to 1985. The postmarked envelopes and the applicant's statements must be weighed in conjunction with all the evidence in the file, which includes the aforementioned record of the F-1 student visa issued to the applicant on September 4, 1985. Though counsel asserts that the visa was "improvidently issued" because the applicant did not reveal his prior illegal residence and unauthorized employment in the United States, this assertion (nearly two decades after the fact) contradicts the contemporaneous information provided by the applicant in 1985. As far as the record shows, the applicant's previous presence in the United States could have been on valid tourist visas. The record is unclear, in other words, as to whether the applicant's prior presence in the United States was unlawful, or whether he might have initially entered the country on a tourist visa (B-2) and only lapsed into unlawful status when he overstayed the visa, which may have been after January 1, 1982. The AAO concludes that the applicant has failed to meet his burden of proof in establishing, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and was also in unlawful status before that date, as required under section 1104(c)(2)(B)(i) of the LIFE Act.

Counsel also asserts in his appeal brief that the applicant was in a continuous unlawful status from the time he first entered the United States, allegedly in July 1981, through the statutorily required date of May 4, 1988. Though the applicant was issued an F-1 student visa in September 1985 by the U.S. consulate in Vancouver, Canada to attend Piedmont College in Georgia, counsel maintains that the visa was "improvidently obtained" because the applicant did not reveal on his application that he had previously been denied an F-1 visa in Hong Kong, had resided illegally in the United States for a number of years, and had worked without authorization in the United States. Since the F-1 visa was obtained under false pretenses, counsel argues, the applicant's subsequent entry into the United States was illegal. Moreover, counsel asserts that the applicant violated his student status by failing to attend school and working without authorization. The evidence of record does not support any of these assertions. As discussed in the preceding paragraph, the applicant's status prior to September 1985 is unclear. He certainly has not demonstrated that he was a resident of the United States in unlawful status prior to January 1, 1982. The fact that the applicant was issued an F-1 student visa in September 1985, based on information which the U.S. consulate judged to be credible at the time, is inconsistent with the applicant's current assertion that he was an illegal resident of the United States before 1985. Counsel has produced no documentary evidence that the applicant violated the terms of his visa by working without authorization or by failing to attend school. In fact, the record includes a photocopy of the applicant's diploma from Piedmont College showing that he graduated on June 11, 1989, in strict conformance with the four-year time frame indicated on his Form I-20A-B, Certificate of Eligibility for Nonimmigrant Student Status for Academic and Language Students. Thus, there is no evidence that the applicant was in unlawful status from the time he entered the United States on his F-1 visa in September 1985 until his graduation from Piedmont College in June 1989. The AAO concludes that the applicant has failed to meet his burden of proof in establishing, by a preponderance of the evidence, that he resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act.

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

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