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**U.S. Citizenship
and Immigration
Services**

LA

FILE:

Office: National Benefits Center

Date: JUL 02 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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 Director, Missouri Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director concluded that the applicant was ineligible to adjust status under section 245A of the Immigration and Nationality Act (INA) because he had been convicted of a felony in Dade County, Florida. The director cited two regulatory provisions, 8 C.F.R. §§ 245a.3(b)(3) and 245a.3(c)(1), specifying that aliens who have been convicted of one felony or three or more misdemeanors in the United States are ineligible to adjust from temporary to permanent resident status.

On appeal, the applicant states that he has never been convicted of a felony. According to the applicant he was arrested on a misdemeanor charge, which was subsequently dismissed.

An applicant 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 director 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 has not been convicted of a felony or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1). In his decision denying the application, the director should have cited these statutory and regulatory provisions. Instead, he cited identical regulatory provisions of the Immigration Reform and Control Act of 1986 (IRCA), which allowed certain unlawful residents of the United States to apply for legalization in the late 1980s. However, since both IRCA and the LIFE Act, together with their implementing regulations, make aliens convicted of one felony or three or more misdemeanors in the United States ineligible for permanent resident status, the director’s incorrect citation of the original legalization regulations, rather than the later LIFE Legalization regulations, was a harmless error.

In his decision the director found that the applicant was arrested April 19, 1996 on the charge of lewd and lascivious behavior – a felony – and that he was convicted after a plea of nolo contendere by the Dade County Court. The director evidently based his finding on the record provided by the Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, on December 20, 2002. According to the FBI record the applicant was charged with lewd and lascivious behavior on April 19, 1996, a felony under “statute/ordinance–FL999.9999(9999),” which was described as a “municipal ordinance violation.” The record indicated that adjudication was withheld after a plea of nolo contendere by the defendant (applicant) on May 23, 1996.

Other evidence in the record does not describe the applicant’s violation as a felony. A report by the Clerk of the Circuit and County Court of the Eleventh Judicial Circuit of Florida in and for Dade County on March 12, 2002, updated for the instant appeal on February 10, 2003, confirms that the applicant’s charge of lewd and lascivious behavior was disposed of on May 23, 1996, after adjudication was withheld, by the payment of a fine and court costs. The report went on to state, in pertinent part, that “[p]ursuant to Florida Rules of Court (Rule 2.075), retention of court records, the requirement for retaining misdemeanor cases is 5 years, and felony cases (not adjudicated guilty) is 10 years.” The report went on to state that the applicant’s case records, with respect to the charge of lewd and lascivious behavior, were

destroyed on January 1, 2002. That date was approximately five and a half years after the disposition of the case, which shows that the charge of lewd and lascivious behavior was handled as a misdemeanor, not a felony. If the charge had been handled as a felony the case records, according to Florida court rules, would still be in existence. In addition to this court record, a form letter from the Miami-Dade County Police Department, dated January 14, 2002, states that its records show the applicant has a "local misdemeanor arrest record," but no "local felony arrest record." Based on the court and police reports, the AAO is persuaded that the applicant was not convicted of a felony in the State of Florida. Therefore, the applicant is not statutorily ineligible for adjustment to permanent resident status under section 1104(c)(2)(D)(ii) of the LIFE Act.

However, the LIFE Act also provides that an applicant for permanent resident status must establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

In the Form for Determination of Class Membership in *CSS v. Meese* and the Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), which the applicant filed with the Immigration and Naturalization Service (INS) in connection with his claim for class membership in July 1990, the applicant asserted that he entered the United States on December 20, 1981. Submitted with the *CSS* class membership claim was a photocopied form letter from Bent Tree Elementary School in Miami, Florida, dated November 27, 1987, stating that the applicant "attended [the school] from January 1982 to the present time and is enrolled in the 9th grade." Several factors cast doubt on the authenticity of this letter. For one thing, the AAO has determined that Bent Tree Elementary School only goes up to fifth grade at the present time and has never had any classes higher than sixth grade. Thus, the applicant could not have attended ninth grade at that school. Moreover, at the time of the letter the applicant (who was born December 26, 1966) was nearly twenty-one years old, approximately six years older than normal ninth graders. It is implausible that the applicant would have attended an elementary school at such an advanced age. Moreover, the subject school has no record of the applicant ever attending as a student. For all of these reasons the AAO concludes that the school letter is not a credible document and carries no evidentiary weight in establishing the applicant's continuous residence in the United States from January 1982 onward.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition to the school letter he submitted to the INS in 1990 with his *CSS* class membership claim, the applicant submitted five affidavits from acquaintances, all prepared in July 1990, who assert that they had known the applicant for periods of time going back to the mid- or early 1980s. The affidavits provided no details, however, as to how and where the affiants met the applicant and the nature of their interaction over the years. All of the affidavits have fill-in-the-blank formats. Four of the five are identical in format and state simply that the "affiant has known [the applicant] for the past _____ years" and considers him to be of "good moral character" and a "loyal and trustworthy person." The five affiants state that they have known the applicant for six, six and a half, seven, eight, and nine years, respectively. Thus, only one of the affiants claims to have known the applicant before January 1, 1982. But even that affiant offers no details about the circumstances of meeting the applicant, where the applicant lived and worked in the early 1980s, or their relationship over the years.

When he filed his LIFE application (Form I-485) in March 2002 the applicant submitted some additional affidavits. In two of them, prepared in January and February 2002, the affiants asserted that they had known the applicant since the early or mid-1980s. One affiant stated that "I have been acquainted with the [applicant] since 1982. During this time I have observed [him] while performing odd jobs as a

handyman for myself and several of my associates, and also, I have . . . becom[e] a personal friend over the years.” The second affiant stated that “I know [the applicant] since 1984. I met [him] when he was recommended to me to do maintenance work in my house. Ever since we develop a friendship that has lasted through the years.” Though these affidavits provided slightly more information than the earlier affidavits, they are still short on details. Considering both acquaintances were close to twenty years old, significantly more data might have been expected from the affiants to establish the credibility of the applicant’s claim to have resided in the United States from the early 1980s. Furthermore, neither of the affiants met the applicant before January 1, 1982 or offers any evidence that he was already in the United States before that date.

Viewed in their entirety, therefore, the affidavits in the record have only marginal evidentiary weight in establishing the applicant’s continuous residence in the United States from before January 1, 1982.

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.” 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). Based on the evidence of record, the AAO determines that the applicant has failed to meet this 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 the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

Accordingly, 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.