



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

[REDACTED]

FILE:

[REDACTED]

Office: Baltimore, Maryland

Date:

JUL 13 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 Baltimore 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 Baltimore, Maryland. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director concluded that the applicant failed to prove he was physically present in the United States before January 1, 1982 and resided continuously in this country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel asserts that the evidence in the record "clearly establish[es] that [the applicant] was continuously present in the United States between January 1, 1982 and May 4, 1988."

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 Director, Missouri Service Center, determined that the applicant filed a timely 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).

As specified 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." (Emphasis added.) 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 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).

The record includes extensive evidence of the applicant's presence in the United States during the 1980s. On 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 class membership claim in March 1992, the applicant stated that he resided illegally in the United States from November 1981 to 1992 at [REDACTED]. Along with the I-687 form the applicant submitted a statement from [REDACTED], dated February 20, 1992, that he resided at the foregoing address and the applicant had lived with him there from November 2, 1981 to the present (1992). In pre-printed language (the statement had a fill-in-the-blank format) the affiant declared that the rent receipts and household bills were in his name and the applicant contributed toward their payment. The applicant also submitted photocopies of three envelopes addressed to him at [REDACTED] with postmarks of July 17, 1982, August 3, 1985, and April 10, 1989. In addition, the applicant submitted a photocopied letter, dated March 20, 1992, from a business called [REDACTED] in Alexandria,

Virginia, stating that "[t]he personnel records show that [the applicant] was employed by [redacted] from November 30th, 1981 to August 22nd 1987. [He] was hired as a custodian on [sic] an hourly rate of \$6.55. The records indicate that [the applicant] was a hard-working employee." The letter was signed by [redacted]. All of the foregoing documentation was before the INS in 1992.

In support of his LIFE application (Form I-485), filed in August 2001, the applicant submitted more documentation of his U.S. residency during the 1980s. Sworn affidavits were submitted from Steven and [redacted], husband and wife, dated July 19 and 20, 2001, declaring that they had rented the three-bedroom apartment at [redacted] with the applicant from 1981 until 1992, at which time they bought a house and moved out. The affiants stated that they shared one room and that their children, [redacted] also lived in the apartment. The affiants indicated that their rent was \$550 per month, and that the applicant's share of the rent increased from \$150 to \$250 per month over the years, paid in cash. Also submitted with the Form I-485 was a photocopy of a Lease Agreement in which [redacted] and the applicant are listed as the tenants of the above apartment under a one-year lease, running from December 1, 1982 to November 30, 1983, at the monthly rate of \$550.00. There are no other lease agreements in the record. The applicant also submitted a sworn statement from [redacted] a resident of Bowie, Maryland, dated August 6, 2001, that "I have known [the applicant] since January 1982, when he was living in Virginia."

In response to the Notice of Intent to Deny the applicant submitted another half dozen sworn affidavits, all prepared in June 2003 and all quite detailed. One affidavit is from the pastor of a church in New York City, [redacted] attesting that the applicant "was a regular member of this church between 1984 and 1988." [redacted] stated that "[the applicant] lived and worked in Virginia, but he visited New York almost every weekend to be with his fiancée." [redacted] also indicated that the applicant and his fiancée became church members on March 18, 1984, and that he baptized the applicant on June 23, 1985. An affidavit from [redacted] who resides in New York City, attests that the applicant dated her friend in New York City (the fiancée identified by [redacted] between March 1984 and January 1988 and that she saw the applicant regularly during those years at church and at social occasions. Two affidavits were submitted by New York City residents who attest that they met the applicant at a Thanksgiving dinner hosted by [redacted] in November 1986. Lastly, two affidavits were submitted from former employees of [redacted] who state that the applicant worked with them at a [redacted]'s outlet in Alexandria, Virginia, in the mid- and late 1980s as a part-time and temporary "flyer distributor" and delivery driver.

In his decision denying the LIFE application the district director took issue with some of the foregoing documents. For example, he stated that [redacted] fails to furnish . . . a phone number for verification of his testimony, therefore his affidavit is deemed improperly executed." This rejection does not detract from the detailed information in the affidavit, the veracity of which could easily have been ascertained (since the name and address of the church are in the letterhead) with a phone number obtained from directory assistance, or perhaps a website. The district director questioned whether the applicant could have actually lived in northern Virginia and attended church regularly in New York City on weekends. The AAO does not find this scenario implausible, bearing in mind that the distance between the two locales is not all that great, that the applicant's fiancée resided in New York, and that "regular attendance" does not necessarily equate to every Sunday. The crucial issue, moreover, is not the frequency of the applicant's travel between New York and Virginia during the years in question, since both locales are in the United States.

The district director questioned the two affidavits from former Domino's employees since the applicant did not list Domino's as a former employer on the Form I-687 he filed with the INS in 1992, no supporting documentation was submitted from Domino's itself, and both affiants failed to furnish their phone numbers for verification purposes. Once again, since the names and addresses of the affiants were provided, the district director may well have been able to contact them through directory assistance if he had tried. It is true that the applicant neglected to mention employment at Domino's on his I-687 form, and has not explained

why. That does weaken these two affidavits as evidence of the applicant's residence in the United States in the mid- and late 1980s. In view of the wealth of other documentation in the file, however, the AAO does not view the affidavits as casting the applicant's fundamental credibility in doubt.

Lastly, the district director declared that the affidavits submitted by [REDACTED] (the applicant's former co-tenants), [REDACTED], and the two people who attest that they met the applicant at Thanksgiving dinner in 1986, "all fail to contain a telephone number for verification." With respect to the Oseis this complaint is incorrect, since their affidavits on July 19 and 20, 2001 include their common phone number. As for the other three affidavits, prepared in 2003, the district director might well have obtained phone numbers for each of the affiants (who supplied their respective addresses) from directory assistance. Absent any indication that the district director even tried to obtain the phone numbers, it is misleading for him to state, as he did in the decision, that "there is no way to verify the testimony in these affidavits."

Though not discussed in the district director's decision, the documentation of record is somewhat inconsistent with respect to the applicant's living arrangements at [REDACTED] in 2001 or 2003. Nor does [REDACTED] refer to the [REDACTED] in his 1992 statement. It does not seem implausible, however, that [REDACTED] could have resided with the applicant and the [REDACTED] in the three-bedroom apartment as an unregistered tenant. The [REDACTED] acknowledge that their two minor children lived with them in the apartment, but were not registered with the landlord so that their rent would not be increased. As for [REDACTED] statement that the rent receipts and household bills were in his name, that does not appear to have been the case in 1982-83 (under the lease agreement) and there is no evidence that it was the case in later years. So there are clearly some discrepancies between the written statements of [REDACTED] and the [REDACTED] which are unresolved by the applicant, as to exactly who lived at [REDACTED] during the 1980s. The crucial question in this LIFE application, however, is not who the applicant's co-tenants were, but whether the applicant himself resided at the subject premises from 1981 to 1988. Based on the totality of the documentation in the record, the AAO is persuaded that the applicant *was* one of the tenants during those years.

In conclusion, the AAO does not share the district director's negative view of the evidence in this case. Though the myriad affidavits and other materials in the file do contain a few discrepancies, they are not significant enough to undermine the overall credibility of the applicant's documentation. Viewing the record in its entirety, the AAO concludes that the applicant has established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.