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



LR

FILE:



Office: Los Angeles

Date: JUL 20 2004

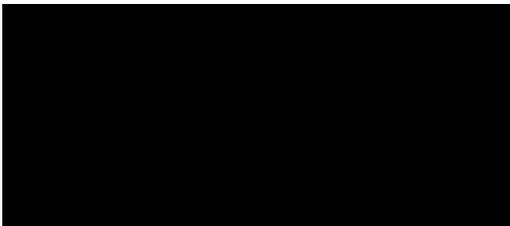
IN RE:

Applicant:



PETITION: 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. All documents have 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director based this determination on the fact that the applicant admitted that his authorized period of stay as a nonimmigrant B-2 visitor to the United States had not expired through the passage of time prior to January 1, 1982.

On appeal, counsel asserts that the applicant's entry into this country with a non-immigrant B-2 visitor's visa in December 1981, was an unlawful entry, and that the Government had notice of his unlawful entry prior to January 1, 1982.

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 regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B)(i). In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date. Section 1104(C)(2)(B)(ii) of the LIFE Act.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

The record shows that that the applicant is a class member in a legalization class-action lawsuit who submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA, on January 9, 1990. On the Form I-687 application, the applicant indicated that he first entered the United States with a non-immigrant B-2 visitor's visa in December 1981, with a period of authorized stay until June 1982. The applicant noted that he overstayed his visa by remaining in this country beyond the expiration of his period of authorized stay in June 1982 on the Form I-687 application. Subsequently, during the course of his LIFE Act interview on February 21, 2003, the applicant again admitted that he first entered this country with a B-2 visitor's visa in December 1981. The applicant also acknowledged that he then remained in the United States beyond the expiration of his period of authorized stay.

The director determined that the applicant's authorized stay clearly did not expire through the passage of time prior to January 1, 1982, and, therefore determined that he was statutorily ineligible to adjust to permanent residence under the provisions of the LIFE Act. Now it must be determined whether the applicant had violated his lawful status as a B-2 non-immigrant visitor prior to this date, and whether such unlawful status was known to the Government as of January 1, 1982.

Counsel asserts that the applicant's entry into this country with a non-immigrant B-2 visitor's visa in December 1981, was unlawful because he never intended to return to his native country. Counsel contends that applicant obtained his B-2 visitor's visa fraudulently because he purposefully provided inaccurate information and evidence regarding his intent to violate his period of authorized stay in the United States. Counsel declares that the applicant's fraudulent procurement of his visa utilizing inaccurate information and evidence provided the Government with notice of his unlawful entry prior to January 1, 1982. However, counsel's reasoning is flawed in that the applicant did not commit any act which could be considered as unlawful until he exceeded the period of authorized stay allowed under the provisions of his non-immigrant B-2 visitor's visa in June 1982. It is a generally accepted principle of law that an individual's state of mind and thoughts are irrelevant unless and until that individual commits a corresponding act to which culpability could attach. The applicant's procurement of the B-2 visitor's visa cannot be considered to have been fraudulent until he exceeded his period of authorized stay.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status which was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the LIFE Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

Counsel's statements on appeal have been considered. Nevertheless, in this case it is clear that the applicant's authorized stay did not expire prior to January 1, 1982. The applicant may well have had a preconceived intent to remain in the United States when he entered. However, even if we were to consider him to have been unlawful since entry, there is no evidence the Government was aware of any unlawfulness.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.