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U.S. Citizenship
and Immigration
Services

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JUL 20 2004

FILE:

Office: Houston, Texas

Date:

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 Houston 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director concluded that the applicant failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988 because he was absent from the country in 1985 for a period of time which, in the director's judgment, exceeded the maximum number of days set by regulation.

As specified in the regulations: "If an appeal is filed from within the United States, it must be received by the [Immigration and Naturalization] Service [now Citizenship and Immigration Services, or CIS] within 30 calendar days after service of the Notice of Denial (NOD)." 8 C.F.R. § 245a.20(b)(1). "The 30 day period for submitting an appeal begins 3 days after the NOD is mailed." *Id.* The Notice of Denial in this case is dated October 28, 2003, but the applicant has submitted a photocopy of the envelope in which it was mailed with a postal stamp dated November 3, 2003. The applicant's appeal was stamped as received by the Houston District Office on December 2, 2003. That was 29 days after the NOD was mailed. Accordingly, the applicant's appeal was timely filed.

On appeal, counsel asserts that the applicant was not given adequate time to submit evidence in support of his application. Counsel asserts that there is sufficient evidence in the file to establish the applicant's eligibility for legalization under the LIFE Act, and requests that the district director's decision be reversed.

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, found that the applicant satisfied this statutory and regulatory criterion by filing a timely claim for class membership in one of the above lawsuits.

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 in an unlawful status continuously from then through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). This "continuous residence" requirement is further defined in 8 C.F.R. § 245a.15(c)(1):

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

In the Notice of Intent to Deny he sent to the applicant prior to denying the LIFE application, the district director indicated he was not persuaded that a trip the applicant made to his native Pakistan in 1985 lasted only one month, as the applicant alleged, because he returned to the United States with a B-2 visitor's visa. The director expressed the view that the applicant would have had to stay three months in Pakistan to secure that visa from the U.S. embassy. An absence from the United States of that duration, unless necessitated by "emergent reasons," is double the maximum time allowed under 8 C.F.R. § 245a.15(c)(1). The applicant

was advised to submit additional evidence addressing this issue within 30 days, but failed to do so. Thereafter the district director then issued his Notice of Denial.

In the appeal counsel argues that because the applicant was interviewed by the Houston District Office on May 2, 2003 and given an instruction form requesting that additional specified documents be submitted before July 31, 2003, it was improper for the district director to issue his Notice of Intent to Deny as early as he did, on June 6, 2003. That was nearly two months before the due date indicated on the aforementioned document request form. The Notice of Intent to Deny, however, did not cut off the applicant's opportunity to submit the previously requested documents. In fact, the applicant was afforded 30 days to submit additional evidence. Though this time frame was shorter than that indicated in the previous document request form, in actuality the subsequent Notice of Denial was not issued until October 28, 2003. That was nearly five months after the Notice of Intent to Deny and three months after the July 31, 2003 deadline for additional evidence in the document request form. Thus, the applicant had plenty of time to submit additional evidence in response to the document request form and the district director's Notice of Intent to Deny.

The applicant has not submitted any additional evidence regarding the length of his absence from the United States in 1985. Nor has he even mentioned the issue in his appeal. More broadly, the applicant's file contains almost no evidence of his unlawful residence in the United States for the statutorily required time period of before January 1, 1982 through May 4, 1988. The only evidence thereof in the record is an I-687 form and a personal affidavit which the applicant filed in connection with his class membership claim in December 1989.

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"). Most importantly, the regulations require that "[t]o meet his or her burden of proof, an applicant must provide evidence of eligibility *apart from his or her own testimony*." 8 C.F.R. § 245a.12(f) (emphasis added).

The applicant in this case has provided no evidence that he entered the United States before January 1, 1982 and resided unlawfully in the country continuously from before January 1, 1982 through May 4, 1988 aside from his own testimony in the aforementioned I-687 form and personal affidavit dating from December 1989. By regulation, therefore, the applicant fails to meet his burden of proof, by a preponderance of the evidence, that he resided in the United States continuously and unlawfully for the time period required in 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.