

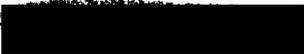


U.S. Citizenship
and Immigration
Services

Administrative Appeals Office
Los Angeles District Office
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Los Angeles, CA 90015
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FILE:



Office: Los Angeles, California

Date:

10/17/00

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 Los Angeles 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, Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The director concluded that the record failed to establish that the applicant (1) entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status from then through May 4, 1988, as required under 8 C.F.R. § 245a.11(b), and (2) was continuously physically present in the United States between November 6, 1986 and May 4, 1988, as required under 8 C.F.R. § 245a.11(c).

The applicant appealed and resubmitted some materials already in the record.

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.

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). In addition, the applicant must establish that he or she was continuously physically present in the United States from November 6, 1986 to May 4, 1988. See section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c) and 16(b).

The Missouri Service Center determined that the applicant filed a timely written claim for class membership in CSS. However, the district director found that the applicant failed to meet his burden of proof regarding his continuous residence and continuous physical presence in the United States during the required time periods. In his decision (which referred to the earlier Notice of Intent to Deny) the District Director discussed the applicant's interview on January 9, 2002 to determine his eligibility for legalization under the LIFE Act. The District Director indicated that the applicant was requested to provide written evidence that he entered the United States before January 1, 1982, resided unlawfully on a continuous basis in this country from then until May 4, 1988, and was continuously physically present in the United States from November 6, 1986 to May 4, 1988. According to the district director the applicant was unable to provide such evidence.

The AAO has reviewed the evidence of record and comes to a different conclusion.

With respect to the applicant's date of entry into the United States and continuous residence in this country, the applicant filed a Form I-687 application with the INS in May 1995 (along with a Form for Determination of Class Membership in *CSS vs. Meese* and his claim for class membership in CSS) in which he stated that he entered the United States as a nine-year old child in December 1981 and lived from then until September [REDACTED]. These documents were accompanied by a separate sworn statement from the applicant along with an affidavit from his uncle, [REDACTED] that the applicant and his parents came to live with him at the above address in December 1981 and that they continued to live together at two subsequent addresses in Los Angeles until May 1983. Also submitted were school and health records documenting that the applicant received his first immunizations on August 12, 1982 and was enrolled in elementary school the following month. School records list the applicant's address in September 1982 as [REDACTED]. The two subsequent addresses listed on the school form in 1982 and 1983 accord with those given by the applicant's uncle in his affidavit. The applicant submitted two more

affidavits in 2001 from a longtime acquaintance and a family member attesting to his arrival in the United States in December 1981 and initial residence at [REDACTED]. At his LIFE legalization interview on January 9, 2002, the applicant apparently did not submit any further evidence. According to the interviewer's notes, the applicant once again asserted that he entered the United States illegally with his parents in December 1981. The interviewer stated that "[s]chool records and immunizations cover 8/82 – 1989," and the applicant "does not know why he did not go to school upon arriving in the U.S." The interviewer was satisfied with the evidence of continuous residence in the United States from August 1982 to 1989, but concluded that there was "insufficient evidence of unlawful residence prior to 1/1/82." The applicant submitted two additional affidavits in 2003 from longtime acquaintances stating that they met the applicant at church in 1981, just after his arrival in the United States, and that they have been in close touch ever since.

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." (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). Viewing the record in its entirety, the AAO finds that the applicant has met this burden of proof with regard to his residence in the United States during the time period of December 1981 to August 1982. The cumulative weight of the affidavits and the detail of information provided therein offset the lack of any primary documentation of the applicant's U.S. residence before August 1982. The nine-month interlude between the applicant's arrival in the country and his enrollment in school does not seem out of the ordinary since he came during the middle of a school year and presumably knew little or no English at the time. Accordingly, the AAO is persuaded that the applicant entered the United States before January 1, 1982 and resided in the United States in an unlawful status continuously through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

As for the district director's other determination that the applicant failed to establish his continuous physical presence in the United States from November 6, 1986 to May 4, 1988, the basis for this finding was not explained in the decision. School records in the file clearly show that the applicant was enrolled in junior high school during the academic years 1986-87 and 1987-88 and that he graduated from junior high school (9th grade) in June 1988. According to the evidence of record, the applicant departed the United States just once during the subject time period – from March 4 to 22, 1988 – to visit his ill grandmother in Mexico. A trip of this duration and nature qualifies as a "brief, casual, and innocent absence from the United States" within the meaning of 8 C.F.R. § 245a.16(b). Accordingly, it is not considered to have interrupted the applicant's continuous physical presence in this country. *Id.* In the AAO's view the documentation in the record easily proves, by a preponderance of the evidence, that the applicant was continuously physically present in the United States for the requisite time period of November 6, 1986 to May 4, 1988, as required by section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c) and 16(b).

For the reasons discussed above, the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, continuous unlawful residence in the United States through May 4, 1988, and continuous physical presence in the United States between November 6, 1986 and May 4, 1988.

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.