



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: Los Angeles, California

Date:

[Redacted]

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 District Office in Los Angeles. 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 Los Angeles. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided in this country continuously in unlawful status through May 4, 1988.

On appeal, counsel asserts that the decision fails to specify how the evidence of record fails establish the applicant's continuous U.S. residence from 1981 to 1988. Counsel submitted some additional affidavits and a 1989 memorandum of the Immigration and Naturalization Service (INS) entitled "Documentary Evidence for Legalization Applications (Form I-687)."

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 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).

Though the applicant asserted in the documentation he filed in conjunction with his class membership claim in 1990 – a Form I-687 and a Form for Determination of Class Membership in *CSS v. Thornburgh* – that he entered the United States on December 16, 1980 and began residing in this country at that time, the only supporting evidence at the time the applicant filed his LIFE application in 2002 was an undated statement from a former employer, [REDACTED], that "I have known [the applicant] since December of 1980 and [i]n January of 1981 he started working for me." The affiant went on to state that "on March 11, 1988 [the applicant] stopped working for me because he took a job somewhere else." On appeal the applicant submitted two additional affidavits dated November 3, 2003 from [REDACTED] who appear to be husband and wife. Both affiants listed the applicant's U.S. addresses during the 1980s and stated that "I have known [the applicant] since 1980, we are very good friends." These affidavits are the only supporting evidence the applicant has submitted of his entry into the United States before January 1, 1982 and residence in the United States before 1984.

Counsel cites the aforementioned INS memorandum in 1989, which provided the following guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the INA (enacted as part of the Immigration Reform and Control Act of 1986, or "IRCA"):

In those applications where the only documentation submitted is affidavits, if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved. If found insufficient or not credible, attempts to verify the authenticity of the information should be made ...

The AAO agrees that the 1989 INS memorandum provides valid guidance for adjudicating legalization applications under section 1104 of the LIFE Act. Applying that guidance in the instant case, however, the AAO does not view the three affidavits discussed above as substantive enough to support a finding that the applicant entered and began residing in the United States before January 1, 1982. The first affiant simply states that she has known the applicant since 1980 and that he worked for her beginning in January 1981. She provided no details as to how and where they met, or under what circumstances, which would add credibility to her statement. Nor did the affiant provide any information about why she hired the applicant and what type of work he did for her between 1981 and 1988. The other two affidavits are even more sparse. The affiants simply state that they have known the applicant since 1980 without providing any details about how they met and the nature of their interaction in subsequent years. The AAO does not regard the three affidavits as "sufficient to establish the facts at issue," as the 1989 memorandum directs. Nor does the record contain any other materials to support the applicant's claim that he entered the United States in 1980, or that he resided in the United States before 1984. (An envelope postmarked in November 1984 is the earliest documentary evidence of the applicant's U.S. residence.)

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 foregoing analysis of the evidence in this case, the AAO determines that the applicant has not met his 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 this country 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.