



U.S. Citizenship
and Immigration
Services

Identifying information related to
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LA



FILE:



Office: Baltimore, Maryland

Date:

JUN 21 2010

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 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.

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

Robert P. Wiermann, 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, 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 that she was physically present in the United States before January 1, 1982 and that she resided continuously in this country in an unlawful status from before January 1, 1982 through May 4, 1988. In particular, the district director declared that the applicant “failed to submit documentation for the years 1982 and 1983” proving that she resided in the United States at that time.

On appeal counsel asserts that the record contains voluminous evidence of the applicant’s entry into the United States in 1981 and her continuous unlawful residence in this country from then through 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.

As evidence that the applicant filed a claim for class membership in one of the legalization lawsuits, the record includes (a) an original Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant and dated December 10, 1990, (b) a photocopied notice to the applicant from the INS, dated December 11, 1990, scheduling an appointment at the Legalization Office in Houston, Texas, on February 5, 1991, for “late filing of LULAC or CSS application,” and (c) an original Form for Determination of Class Membership in *CSS v. Meese*, signed by the applicant and dated January 15, 1991. Based on this documentation the AAO determines 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).

The record includes extensive evidence of the applicant’s presence in the United States during the 1980s, including employment, tax, and other records showing that she began working in Houston in April 1984 and resided there continuously through the end of the decade. As for the early 1980s, the applicant indicated on the I-687 and the CSS class membership determination forms she submitted to the INS in December 1990 and January 1991, respectively, that she entered the United States illegally in October 1981. On the I-687 form she listed her first residence in the United States as [REDACTED] from October 1981 to May 1984. The applicant changed the dates of entry and first U.S. residence somewhat on a subsequent Request for Suspension of Deportation (Form I-256A) she filed in December 1994, asserting that she entered the United States on January 10, 1981 and that she lived at the above address in Houston from January 1981 to October 1985. (In the current LIFE Act proceeding the applicant again gives “January 10, 1981” as her date of entry into the United States.) These date changes are relatively minor, however, and inconsequential with respect to the applicant’s fundamental assertions in this action – *i.e.*, that she entered the United States before January 1, 1982 and resided continuously from that time on in Houston. There are no less than eleven affidavits in the record – dating from 1990, 1991, and 2003 – attesting that the applicant came to the United States in 1981 and resided in Houston (initially at [REDACTED] continuously thereafter. Furthermore,

the record includes three original envelopes addressed to the applicant at [REDACTED] from family members in El Salvador, which are postmarked December 30, 1981, August 28, 1982, and February 7, 1983.

In his decision denying the LIFE application the district director, after discussing several of the affidavits and their inconsistency regarding the exact apartment [REDACTED] the applicant first inhabited at [REDACTED] declared that "the Service will not accept these affidavits consisting of blanket statements, spanning a time frame of over twenty years, as evidence that you were physically present in the U.S. in unlawful status in 1982 and 1983 because no documentation has been submitted to substantiate the affidavits." The district director went on to declare that "[l]ikewise, the Service can not accept postmarked envelopes alone as evidence of your alleged unlawful residency in the United States in 1982 and 1983. The postmarking of February 7, 1983, August 28, 1982 and December 31 [actually 30], 1981 only account for one day out of the 365 days in each of these years." The district director concluded that the applicant had "not proven that you resided continuously in the United States in unlawful status during the entire time period since prior to January 1, 1982 through May 4, 1988." (Emphasis in the original.)

In her appeal brief counsel argues that "the Service applied an erroneous and impossibly harsh standard to the applicant's burden of proof." The AAO agrees. The cumulative weight of the eleven affidavits in the file, all of which attest that the applicant came to the United States in 1981, is arguably sufficient evidence in its own right that the applicant entered the United States before January 1, 1982. Moreover, it is inexplicable how the district director could dismiss the three envelopes addressed to the applicant at [REDACTED] in December 1981, August 1982, and February 1983, as insufficient evidence of the applicant's continuous residence in the United States during those years. In the AAO's judgment the three envelopes, in conjunction with the eleven affidavits, amply demonstrate that the applicant resided in Houston before January 1, 1982 and continued to reside in Houston during 1982 and 1983. As previously indicated, there is also abundant documentation in the file of the applicant's continuous U.S. residence from 1984 onward.

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." (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). Based on the evidence of record, the AAO determines that the applicant easily meets her burden of proof that she entered the United States before January 1, 1982 and resided in the United States 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's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.