U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

NOV 30 2004

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

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. 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 and that the applicant was not continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, as set forth in 8 C.F.R. § 245a.11(c). Therefore, the District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. *See District Director's Decision* dated February 9, 2004.

On appeal, counsel states that the District Director erroneously denied the application because she failed to consider all substantial evidence submitted to establish the applicant's eligibility. In addition, counsel states that the denial is arbitrary and without legal or factual support. Counsel submits a brief and affidavits that had been previously submitted after the District Director issued a notice of intent to deny the application. In his brief counsel attempts to address the discrepancies found in the two Applications for Status as a Temporary Resident (Form I-687) submitted by the applicant. Counsel states that the applicant was physically residing at from July 1981 to November 1984 and he continued to used this address as his mailing address until 1991. Counsel further states that he had previously submitted a copy of a letter from India addressed to the applicant at the address in question dated October 15, 1981 and a copy of an envelope addressed to the applicant postmarked in 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.

Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

> 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 that were most recently in effect before the date of the enactment of this Act shall apply.

"Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

> 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.

Counsel's statements are not persuasive. On a Form I-687 signed by the applicant on May 11, 1990, he stated that [redacted] was his physical residence address since 1981 and that his mailing address was 1303 [redacted] On another Form I-687 signed by the applicant on December 12, 1990, he claimed to have resided at [redacted] from July 1981 to January 1986 and does not mention ever residing at the [redacted] ddress. Furthermore a review of the record of proceedings does not reveal copies of a letter or an envelope address to the applicant at the address in question.

The District Director's decision that the applicant was ineligible for permanent resident status under the LIFE Act was based on discrepancies between the documentation submitted by the applicant and a thorough review of the applicant's Service file. As mentioned above the applicant submitted two Form I-687 with discrepancies as to his addresses during the time required in order to adjust states under the LIFE Act. In addition, in his Biographic Information (Form G-325) submitted with a Petition for Alien Relative (Form I-130) he indicated that he lived in India from March 1976 to February 1990, with no indication of residence in the United States. Finally, in a statement signed on April 25, 1990, under penalty of perjury, the applicant stated that his last entry into the United States was June 12, 1987. The record of proceedings clearly reflects that the applicant was issued a nonimmigrant visa on August 8, 1989, and was admitted into the United States on April 19, 1990.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. As noted above an applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988, 8 C.F.R. § 245a.11(b). A review of the recently submitted documentation and the documentation in the record of proceeding, when considered in its totality, cannot overcome the discrepancies in the application for adjustment of status.

The applicant has 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.