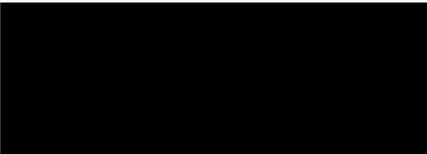


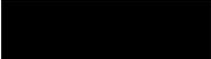


U.S. Citizenship  
and Immigration  
Services

L2



FILE:



Office: Dallas

Date:

OCT 08 2004

IN RE:

Applicant:



PETITION: 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. 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.

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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. In rendering this determination, the district director concluded that the applicant had failed to establish that he was *not* in lawful status as of January 1, 1982. It was also determined that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant asserts that, in rendering its decision denying his application, the district office failed to take into consideration additional evidence he had submitted in response to the notice of intent to deny.

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) of the LIFE Act states:

(i) 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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

The record includes an I-94 Arrival/Departure Record indicating the applicant was admitted to the U.S. on June 19, 1979 as an F-1 nonimmigrant student for duration of status. In addition, the record shows that in June 1982, the applicant's period of authorized stay was extended until January 22, 1983. As such, the applicant's period of authorized stay had not expired by January 1, 1982. Therefore, it must be determined whether the applicant was nevertheless in unlawful status which was known to the government as of that date.

However, although not dealt with in the district director's decision, it must also be determined whether the applicant was nevertheless in violation of his lawful F-1 nonimmigrant student status prior to this date, and whether such unlawful status was known to the government as of January 1, 1982.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status which was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. At the same time, the LIFE Act specifies that the unlawfulness had to have been known to the Government as of January 1, 1982.

In the present case, the applicant's authorized period of stay clearly had not expired through the passage of time prior to January 1, 1982. It must, therefore, be determined whether the applicant was nevertheless in an *unlawful* status which was known to the government as of that date. In response to the notice of intent to deny, the applicant submitted a statement indicating that, during the period in question, he had engaged in unauthorized employment, in violation of his lawful F-1 nonimmigrant status. In support of his assertion, the applicant submits a photocopy of a Social Security printout indicating his earnings from January 1979 through December 1986. An examination of the printout indicates that, from 1979 through 1982, the applicant was clearly engaged in off-campus employment, including work for a private consulting firm. There is no documentation in the record to indicate that the applicant had ever been granted employment authorization. As such, it can be concluded that, as of January 1, 1982, the applicant, in undertaking unauthorized off-campus employment, was clearly in violation of his F-1 nonimmigrant status. Moreover, as this information was included in a printout from an official governmental agency -- in this case, the Social Security Administration, Baltimore, Maryland -- it can be concluded that the applicant's unlawful employment was, in fact, known to the government as of January 1, 1982. As such, the district director was in error in having determined that the applicant failed to establish that as of January 1, 1982, he was residing in the U.S. in an *unlawful* status.

"*Continuous unlawful residence*" is defined 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.

In her decision, the district director determined that, based on information included the applicant's own Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA), along with his supplemental Processing Sheet for Form I-485, the applicant departed the U.S. on August 8, 1986 and remained abroad until November 18, 1986. As such, the applicant was absent for approximately 101 days, which exceeds the 45-day period allowable for a single absence.

While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In response to the notice of intent to deny, the applicant submitted a statement in which he asserted that the reason for his August 8, 1986 departure from the U.S. was for the purpose of visiting his family in Iran. According to the applicant, upon arriving at Frankfurt airport, he became aware that his briefcase containing valuables and important documents such as identification papers and passport material had been stolen. In his statement, the applicant asserted that as a result of the theft, it took nearly three months to replace or reproduce the stolen papers and documents prior to his return to the U.S. In support of his statement, the applicant provided a photocopy of a Frankfurt police report pertaining to the theft in question.

The applicant's statement in response to the notice of intent, along with the photocopied police report he has provided, would indicate that an emergent or unanticipated circumstance had clearly come into being which delayed the applicant's return to the U.S. beyond the 45-day period. It must, therefore, be concluded that the applicant has met his burden of proof of establishing continuous unlawful residence in the U.S. since prior to January 1, 1982 through May 4, 1988.

It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1140 of the LIFE Act. Accordingly, the matter will be forwarded to the appropriate district office for further processing and adjudication of the LIFE Act application.

**ORDER:** The appeal is sustained. The director shall forward this matter to the proper district office for the completion of adjudication of the application for permanent residence.