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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: Houston, Texas

Date: Oct 12 2004

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration and 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 Houston 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The district director concluded that the applicant had failed to prove by a preponderance of the evidence that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required under the LIFE Act.

On appeal counsel asserts that the applicant fulfills the statutory requirement of having resided continuously in the United States from before January 1, 1982 through May 4, 1988. In support of the appeal he submitted a declaration by the applicant and additional documentation of the applicant's residence in the United States during the years 1981-1988.

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.

The record indicates that the applicant filed a timely claim for class membership in *LULAC*.

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, as required by section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). One aspect of this requirement is that "[i]n the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time." Section 1104(c)(2)(B)(ii) of the LIFE Act.

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. . . . The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification." As explained in *Matter of E-M-*, 20 I & N Dec. 77, 80 (Comm. 1989), "when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true." The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are "relevant documents" which warrant consideration in legalization proceedings. *Id.* at 82-83. Preponderance of the evidence has also been 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).

In his decision, which referred to the previous notice of intent to deny, the district director cited the applicant's sworn statement at his interview regarding LIFE legalization on March 25, 2003, that he first entered the United States in October 1981 on a B-2 visa valid for six months. Though the applicant did not state at the interview exactly when the visa was issued to him by the U.S. consulate in Warsaw, it appears that it only shortly preceded the applicant's plane flight to the United States. That means the visa would not have expired until well after January 1, 1982, and the applicant's status in the United States would not have become unlawful until sometime after January 1, 1982. In the declaration he filed on appeal the applicant repeated his statement, without further details, that he "came to the United States . . . in October 1981 on a tourist visa." Based on this evidence the AAO determines that the applicant has

failed to establish by a preponderance of the evidence that he resided continuously in the United States in an unlawful status for the entire time period required by section 1104(c)(2)(B) of the LIFE Act – *i.e.*, from before January 1, 1982 through May 4, 1988.

The district director declared in his decision that the applicant's credibility was in doubt because he had failed to disclose a previous trip to Poland in August and September 1987. In the district director's view, the applicant's documented entry into the United States with a B-2 visa on September 10, 1987 may have been his initial entry into the United States (thus negating his claim to have been a continuous U.S. resident since October 1981) because U.S. authorities in Poland would not have issued such a visa unless the applicant convinced them that his residence was in Poland. In support of this deduction the district director cited the initial Form I-539, Application to Extend Time of Temporary Stay, which the applicant filed on February 11, 1988, in which he declared that his permanent address was in Poland and the reason he wanted to stay longer in the United States was to visit relatives. Counsel argues on appeal that the applicant never concealed his 1987 trip to Poland from the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS). The record supports that argument since the applicant stated on the Form I-687 and the Sample *LULAC* Class Member Declaration he filed with the INS in July 1992 that he departed the United States for Poland on July 29, 1987 and returned on September 10, 1987. Counsel also explained that the reason the applicant declared his permanent residence to be in Poland on his I-539 form(s) is that he did not think he could declare the United States to be his permanent residence until he received his work authorization in 1992.

As previously indicated, the applicant has submitted additional materials on appeal as evidence of his continuous residence in the United States from 1981 through 1988. There is no evidence in any of that documentation, however, that the applicant's status in the United States was unlawful prior to January 1, 1982. Thus, even if he did enter the United States in October 1981, as claimed, the applicant does not meet the statutory requirement, set forth in section 1104(c)(2)(B) of the LIFE Act, of having resided continuously in the United States in unlawful status from before January 1, 1982 through May 4, 1988.

Accordingly, the applicant is ineligible for adjustment to legal permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.