



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Los Angeles, California

Date:

OCT 18 2004

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Los Angeles 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

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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 District Director, Los Angeles, California. 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 the applicant submitted ten affidavits from individuals who assert that the applicant has resided in the United States continuously since 1981.

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 in 1990 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).

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).

The applicant, who was born in Mexico on April 26, 1973, asserts that he entered the United States in 1981, at the age of eight, in the company of someone his father paid to bring him across the border. According to the applicant his mother and siblings followed two years later, and the family resided for the rest of the 1980s in Sun Valley, California. The applicant submitted no documentary evidence of his alleged residence in the United States in the 1980s with his LIFE application or in response to the notice of intent to deny. On appeal the applicant has submitted ten affidavits in identical format from California residents who declare “that to (his/her) personal knowledge the applicant has reside[d] in the United States as follows: Sun Valley, CA from 1981 to 1990.” The affidavits offer no further information about the applicant, the extent of the applicant’s relationship with the various affiants, or any other details of how the affiants “know” the applicant resided in the United States beginning in 1981. Moreover, the applicant has not explained why such affidavits were not submitted earlier in this proceeding, since applicants were instructed to submit supporting evidence *with* their LIFE applications. In the AAO’s judgement, the affidavits lack sufficient evidentiary weight and credibility to establish the applicant’s continuous U.S. residence from before January 1, 1982 through May 4, 1988.

Furthermore, the record includes photocopies of the federal income tax returns of the applicant's father, Eduardo Ramirez, for the years 1987 and 1988 which completely contradict the applicant's assertion to have resided in the United States continuously from 1981 onward. In those tax returns the applicant's father listed his son as a dependent for exemption purposes and, in answer to the question of how many months the applicant lived in his home during the respective years, answered "Mexico" in his 1987 return and "0" in his 1988 return. (In his California tax form for 1989, the applicant's father indicated that the applicant lived in his home for four months that year, while subsequent federal returns for 1990 and 1991 list the applicant as living with his father the entire year.) Based on these tax records it appears that the applicant spent all of 1987 and perhaps 1988 as well outside the United States.

For the reasons discussed above, the applicant has failed to meet 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 the United States continuously in an unlawful status through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.12(e).

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

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