



U.S. Citizenship  
and Immigration  
Services

✓

[REDACTED]

FILE:

[REDACTED]

Office: Houston, Texas

Date:

OCT 18 2001

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. 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

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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 in Houston, Texas. 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 he entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status through May 4, 1988. In particular, the district director found that the applicant, based on his interview testimony as to the duration of his schooling in Pakistan, could not have entered the United States before 1984.

On appeal counsel asserts that the interviewing officer misconstrued the information provided by the applicant about his schooling in Pakistan. Counsel also asserts that the district director ignored documentary evidence submitted by the applicant of his school record in Pakistan and of his continuous U.S. residence and employment 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.

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 January 3, 1991, (b) an original Form for Determination of Class Membership in *CSS v. Meese*, signed by the applicant and dated January 3, 1991, and (c) a photocopied notice to the applicant from the Immigration and Naturalization Service (INS) scheduling an appointment at the Legalization Office in Houston, Texas, on August 22, 1991, for “late filing of *LULAC* or *CSS* application.” 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). In addition, the applicant must establish that he or she was continuously physically present in the United States from November 6, 1986 to May 4, 1988. See section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c) and 16(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 (5<sup>th</sup> ed. 1979).

In the I-687 and CSS class membership determination forms which he filed with the INS in 1991 the applicant declared that he first entered the United States illegally on July 5, 1981, lived at four different addresses and worked for three different employers in Houston up to January 1991, and departed the country only once during that time – from August 20, 1987 to September 21, 1987 – to visit his mother in Pakistan. The record includes extensive evidence of the applicant's presence in the United States during the 1980s, including letters from the two employers he claims to have worked for as a maintenance man between September 1981 and January 1989, photocopies of the applicant's W-2 wage and tax statements for the years 1981 through 1985, envelopes addressed to the applicant in Houston bearing postmarks from the years 1982, 1983, 1986, and 1987, and affidavits from two individuals in Houston attesting that the applicant lived with them from July 1981 to March 1986 and from April 1986 to December 1990, respectively, at the three addresses identified in the applicant's Form I-687 for that time period. The district director ignored all of this evidence in his notice of intent to deny and subsequent notice of denial.

In his decision the district director focused on the applicant's oral and written statements at his interview for adjustment of status under the LIFE Act, held on April 1, 2003. As recounted by the district director, the applicant had stated in his interview that he attended school for twelve years in Pakistan, including six years of elementary school, three years of middle school, and three years of high school and college. Noting that the applicant was born on June 1, 1966, the district director went on to declare that "in accordance with your description of starting school at six years old plus twelve years of education, your first entry to the United States obviously was not earlier than 1984. Consequently, it is determined that you did not enter the United States before January 1, 1982."

On appeal counsel asserts that the "[interviewing] officer made conclusions which are not in line with what the [applicant] said," and that the district director improperly based his decision on these incorrect conclusions. A review of the interviewer's notes lends support to counsel's argument. The applicant acknowledges that he attended school for twelve years in Pakistan, as recorded by the interviewer, and asserts that his schooling consisted of six years in elementary school, three years in middle school, and three years in high school. According to the interviewer's notes, however, the applicant stated that "I finished elementary school (6 years), middle school (3 years), high school (2 years) and college (2 years) in Pakistan." That adds up to 13 years of schooling, not 12. Thus, the notes appear to be in error. The applicant has submitted a photocopy of a "secondary school certificate examination" issued by the Board of Secondary Education in Karachi on April 20, 1981, certifying that the applicant passed the said examination held in May 1979 and had been placed in Grade B. This document does not resolve the issue of how many years of school the applicant attended in Pakistan and when his schooling ended. However, it is not inconceivable that the applicant could have completed twelve years of school in Pakistan before coming to the United States, at the age of 15, in July 1981. Most importantly, the interviewer's notes do not contain any information about what year the applicant started school or how old he was at the time. Thus, there is no basis in the record for the district director's statement, in the notice of intent to deny, that the applicant started school at the age of six. Since the district director's calculation that the applicant could not have entered the United States before 1984 flows directly from this unsupported premise, the basis for the denial is false.

The AAO concludes that the evidence of record does not support the district director's determination that the earliest the applicant could have entered the United States was 1984. Considering the extensive documentation of the applicant's residence and employment in the United States from 1981 onward, the AAO does not view the incomplete information regarding the time frame of the applicant's education in Pakistan as an omission of sufficient evidentiary weight to defeat the applicant's claim to have resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B)(i) of the LIFE Act. The applicant's 32-day trip to Pakistan in 1987 to visit his ailing mother did not interrupt his continuous U.S. residence because it did not exceed the 45-day maximum for any one absence from the United States, as prescribed in 8 C.F.R. § 245a.15(c)(1). Moreover, a trip of that duration and nature qualifies as a "brief, casual, and innocent absence from the United States"

within the meaning of 8 C.F.R. § 245a.16(b). As such, it is not considered to have interrupted the applicant's continuous physical presence in the United States between November 6, 1986 and May 4, 1988, as required by section 1104(c)(2)(C)(i) of the LIFE Act.

The AAO determines that the applicant has met his burden of proof, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by statute and regulation.

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.