



U.S. Citizenship
and Immigration
Services

LA

[REDACTED]

FILE: [REDACTED]

Office: Houston, Texas

Date:

NOV 10 2002

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 establish (1) that he entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status from then through May 4, 1988, and (2) that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

On appeal counsel asserted that the applicant has submitted ample documentation of his continuous U.S. residence and physical presence during the required time periods. Counsel contends that the district director erred in finding that inconsistencies in the record regarding the applicant's date of first entry into the United States and subsequent absences from the United States made the applicant ineligible for permanent resident status.

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 Missouri Service Center determined that the applicant filed a timely written 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 (5th ed. 1979).

In the Form I-687, Application for Status as a Temporary Resident, and the Form for Determination of Class Membership in *CSS v. Meese* which he filed with the Immigration and Naturalization Service (INS) in 1990, the applicant declared that he first entered the United States in Laredo, Texas, on August 14, 1979, lived at various addresses in Houston over the next eleven years, and departed the country only once during that time – from May 5, 1987 to June 5, 1987 – to visit his native Pakistan after his father's death. As evidence of his continuous U.S. residence during the 1980s the applicant submitted a series of affidavits, including:

- 1) A statement by the applicant's uncle, [REDACTED] dated April 24, 1990, that the applicant lived with him at [REDACTED] Houston, Texas, from July 1981 to December 1984.
- 2) A statement by [REDACTED] dated March 21, 1990, that the applicant lived with him at four different addresses in Houston, Texas, between January 1985 and September 1988, including (a) [REDACTED] in January 1985 to March 1987, (b) [REDACTED] from April to October 1987, (c) 9700 [REDACTED] 1987 to April 1988, and (d) [REDACTED] May 1988 to September 1988.
- 3) A statement by [REDACTED] Texas, dated March 14, 1987, declaring that "I met [the applicant] when he came [to] my neighbor['s] cleaner to visit his friend [REDACTED] in 1981." The affiant stated that he had seen the applicant many times over the years and "[p]resently [the applicant] is working a[t] a convenience store."
- 4) A statement by [REDACTED] Texas, dated April 2, 1987, declaring that "I met [the applicant] when he came to my apartment with my neighbour in 1980." The affiant stated that she had seen the applicant many times over the years and "[p]resently [the applicant] is working [at a] convenience store as a manager."

Supplementing these affidavits were three envelopes addressed to the applicant from individuals in Pakistan, postmarked in 1983, 1985 and 1986, with Houston addresses corresponding chronologically to the addresses listed above. (Though he indicated on his Form I-687 that his first address in Houston was at [REDACTED] from August 1979 to June 1981, the applicant submitted no affidavit or other evidence thereof.)

The applicant also submitted statements from the three employers he listed on his Form I-687, including:

- 1) A statement by [REDACTED] an "independent contractor" of the Houston Chronicle, District [REDACTED] dated March 7, 1987, declaring that the applicant "has work[ed] for us as evening shift deliver[er] . . . during October 1980. [The applicant] quit his job in September 1985."
- 2) A statement by [REDACTED] president of a food market chain called [REDACTED] dated July 22, 1987, declaring that the applicant "has been employed by our firm from December 31, 1985 to May 1986 on a full time basis as a general worker, on a cash basis. . . . The information set forth herein was taken from official company records . . . at [REDACTED] Avenue, Houston, Texas."
- 3) A statement by [REDACTED], president of Houston Union, Inc. [REDACTED] in Houston, dated June 23, 1987, declaring that the applicant "has been employed by our firm from April 1, 1986 to present on a full time basis as a stocker, on a cash basis. . . . The information set forth herein was taken from official company records . . . at [REDACTED] Houston, Texas."

Photocopies of the foregoing materials were submitted with the applicant's LIFE application (Form I-485), filed on May 10, 2002.

In his decision denying the LIFE application, which referred to the previously issued notice of intent to deny, the district director focused on several items of incongruous evidence which, in his opinion, undermined the credibility of the applicant's claims to have satisfied the continuous U.S. residence and physical presence requirements for LIFE legalization. The district director discussed the applicant's interview on May 8, 2003

to determine his eligibility for legalization under the LIFE Act. In that interview the applicant was accompanied by an attorney and signed a sworn statement attesting to the veracity of the interview notes prepared by the examiner. As recorded by the examiner the applicant stated that "I attended elementary, middle school total 10 years education in Pakistan . . . [and] first entered U.S. in August 1979." The district director, noting that the applicant was born on November 25, 1967, concluded that "in accordance with your description of ten years of education in Pakistan, your first entry to the United States obviously was not earlier than 1983." In his sworn statement the applicant indicated that his first passport was "issued in Pakistan in 1978" and "the second one issued in 1986. I got from Pakistan. I used this one [to] travel from Pakistan to Canada." The district director concluded that "your second passport was issued in Pakistan in 1986" and with that passport the applicant "made international travels" which were not listed as an absence in 1986 on the applicant's Form I-687 or on his sworn statement in his LIFE interview. Based on these "inconsistencies" in the record the district director determined that the applicant had not proven by a preponderance of the evidence that he was a continuous resident of the United States and continuously physically present in this country for the time periods prescribed by the LIFE Act.

The AAO has reviewed all of the evidence in this case, including the "inconsistencies" discussed above, and comes to a different conclusion.

With respect to the applicant's schooling in Pakistan, the district director did not explain how he reached the conclusion that, after ten years of schooling in Pakistan, the applicant could not have entered the United States before 1983. The district director seems to have assumed that school in Pakistan begins at the same age as in the United States, but there is no documentation thereof, or exploration of that assumption, in the record. Counsel asserts on appeal that the applicant "had just entered the 10th grade when he came to [the] U.S. He never claimed to finish 10th grade." If counsel's assertion is correct it would appear that the applicant started school in Pakistan sometime before August 1970 – when he was less than three years old. That does not seem impossibly young, considering preschool education in the United States can begin at the age of two.

The record offers only shaky support, at best, for the district director's findings that the applicant was issued a passport in Pakistan in 1986 and made additional international travels that were not declared in his LIFE interview or on his Form I-687. The examiner's notes of the LIFE interview record the applicant as stating that he got his second passport "from Pakistan" in 1986. The notes are ambiguous about where the passport was issued, however, and do not clearly state that the applicant went to Pakistan to procure it. Counsel asserts on appeal that the applicant was issued the subject passport in the United States and "did not visit Pakistan in 1986." According to the examiner's notes, the applicant stated that he used the passport issued in 1986 to travel from Pakistan to Canada. The applicant did not state that he made that trip in the year 1986, however. Rather, the applicant appears to have been referring in the interview to his June 1987 return to the United States from Pakistan via Canada, since he indicated on his I-687 and CSS class membership determination forms in 1990 that he reentered the United States in June 1987 from Vancouver, Canada.

Considering the amount of affidavit and other documentary evidence in the record of the applicant's residence and employment in the United States from 1980 onward, the AAO does not view the "inconsistencies" discussed by the district director as weighty enough 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 31-day trip to Pakistan in 1987, following his father's death, 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 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.

For the reasons discussed above, the AAO determines that the applicant has met his burden of proof. He has established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, resided continuously and unlawfully in the United States from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States between November 6, 1986 and May 4, 1988, as defined 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.