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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: Dallas, Texas Date: OCT 21 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Dallas 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 Family Equity (LIFE) Act was denied by the District Director in Dallas, 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 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 listed all of the evidence previously submitted by the applicant of his presence in the United States during the 1980s – including two sales receipts and six affidavits – and asserts that it meets the preponderance of the evidence standard applicable in this case.

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 establishes 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 continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. *See* 1104(c)(2)(B) 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, born in Mexico on August 8, 1966, asserts that he entered the United States unlawfully in January 1981 and has resided in the United States continuously since then. In the Form I-687, Application for Status as a Temporary Resident, he filed in connection with his *CSS* class membership claim in June 1990, the applicant stated that he lived in Dallas, Texas from January 1981 to November 1989 at the following addresses: [redacted] January 1981 to June 1985, and [redacted] June 1985 to November 1989. The applicant also stated in his I-687 that he was employed as a "laborer" with [redacted] Dallas, at $5.00 an hour from January 1982 to August 1987, after which he did odd jobs and yard work from September 1987 to February 1990.

As evidence of his residence and employment in Dallas during the 1980s the applicant submitted four sworn affidavits from Dallas residents. Two were brief statements from [redacted] 12, 1990, each declaring that he had "personal knowledge" that the applicant had resided continuously in the United States from January 1981 and May 1981, respectively. Another

affidavit, dated June 17, 1990, was from [redacted] residing at [redacted] in Dallas, who declared that "[the applicant] came to live in my home at [redacted] Dallas, Texas, upon his arrival in the States since January 1981. I was financially responsible for his person during this time as he was too young to work and support himself. [The applicant] did odd jobs around the house and helped out with the household chores. . . . We lived at this address until June 1985 at which time we moved to the present address where [the applicant] continued to reside until November 1989. At this time he moved in with his brother, [redacted]" The fourth affidavit, dated June 18, 1990, was from [redacted] a supervisor at [redacted] Construction Company, [redacted] in North [redacted] who declared that "I employed [the applicant] as a laborer earning $4.50 an hour from January 1982 through August 1987. . . . As his performance improved on the job site, I increased his salary so that he was earning $5.50 an hour at the time of termination." The four affidavits are basically consistent with the information provided by the applicant in his Form I-687, though he gave the name of his supervisor (and presumably his personal address), rather than the name of the company (and its business address), as his employer from 1982 to 1987.

In April 1994 the applicant submitted another Form I-687 that specifically identified his employer from January 1982 to August 1987 as [redacted] on [redacted] consistent with the information provided by [redacted] in his 1990 affidavit. The applicant also stated that he worked at a Wendy's restaurant from March 1981 to 1982 (information not provided on his original I-687), and stated that he resided at [redacted] as of January 1981 ([redacted] which he gave on his original I-687 as his initial residence until June 1985). Two more sworn affidavits submitted in support of the instant LIFE application in 2002 have further muddled the evidence of the applicant's addresses during the 1980s. According to [redacted] in affidavits dated May 9, 1992, the applicant moved into their apartment complex on [redacted] the summer of 1985, lived with them at that address until the beginning of 1987, moved with them to another apartment on Worth Street until the summer of 1987, and then moved out to live with some friends. The information provided in these affidavits conflicts with the information provided earlier by the applicant on his I-687s in 1990 and 1994, as well as with the 1990 affidavit of Roque Flores.

As the district director discussed in her decision, the applicant also submitted photocopies of some sales receipts from the 1980s, including "a copy of a receipt issued to you by The Seating Gallery, Inc. which appears to be from August 1982 as well as a copy of a receipt issued to you from R & R Auto Repair, Inc. in 1986." The record also includes another photocopied receipt from [redacted] in 1987. The AAO notes that the latter two receipts identify the applicant's address as [redacted] rather [redacted] whereas the applicant asserted on his original I-687 that he moved from [redacted] June 1985.

Thus, the record contains conflicting evidence about where the applicant lived and worked in Dallas during the 1980s. Considering the earlier affidavits of 1990 were far more contemporaneous with the events described than the later affidavits of 2002, the AAO is willing to give them more evidentiary weight. Other inconsistencies in the record could be attributed to the applicant's overzealous efforts to demonstrate his U.S. residence during the 1980s. In the AAO's judgement, none of the inconsistencies undermines the applicant's fundamental assertion that he resided *in the United States* from 1981 onward. Viewing the record in its entirety, and acknowledging that some doubt remains, the AAO concludes that it is more probable than not that the applicant entered the United States before January 1, 1982 and resided in this country continuously and unlawfully through May 4, 1988. The AAO determines, therefore, that the applicant has met his burden of proof. He has established by a preponderance of the evidence, in accordance with 8 C.F.R. § 245a.12(e), that he resided in the United States for the time period required for adjustment of status under the LIFE Act.

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.