U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Los Angeles, California Date: OCT 22 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

identifying data deleted to prevent [illegible] invasion of [illegible] privacy

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Los Angeles, California. 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 entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status from then through May 4, 1988.

On appeal the applicant asserts that "erroneous evidentiary standards and burdens of proof" were applied in the decision.

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).

8 C.F.R. § 245a.12(e) provides that the applicant "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." 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 her decision, which denied the LIFE application "for the reasons contained in the NOID [notice of intent to deny]" previously issued, the district director stated that the applicant failed to meet his burden of proof that he resided unlawfully in the United States from before January 1, 1982 through May 4, 1988. The district director cited the affidavits submitted by three individuals claiming personal knowledge of the applicant's residence and employment from 1981 onward and noted that none of the affiants mentioned the name of the restaurant (El Dorado) where the applicant assertedly worked. The decision mentioned pay stubs from El [redacted] to the applicant bearing dates in 1984, 1985 and 1986, which in the district director's opinion "does not fit well into your claim that you have been paid in cash." The decision also discussed the affidavit of [redacted] in whose house the applicant allegedly resided from November 1981 to December 1987, which the district director declared " has not fully explored the basis for the affiant's acquaintance and contractual relations with the applicant." The applicant had submitted some additional evidence in response to the notice of intent to deny, but it was not discussed in the decision. The district director simply noted in her decision that "[t]he information you submitted . . . failed to overcome the grounds for denial as stated in the NOID."

The AAO has reviewed all the evidence of record, including the evidence submitted in response to the notice of intent to deny, and comes to a different conclusion on the issue of the applicant's continuous residence in the United States from 1981 to 1988.

In the Application for Status as a Temporary Resident (Form I-687) he filed with the Immigration and Naturalization Service (INS) in connection with his *CSS* class membership claim in February 1991, the applicant indicated that he first entered the United States on November 20, 1981 and that he resided continuously in Oxnard, California from November 1981 to February 1991 at the following addresses: (1) November 20, 1981 to December 18, 1987, (2) January 9, 1988 to June 1990, and (3) (again) – June 1990 to the present (February 1991). On his I-687 the applicant also declared that he was employed at El Dorado restaurant as a "kitchen helper" from December 1, 1981 to December 1987 at the rate of $3.35 per hour, after which he was self-employed in a "yard and lawn service" from January 9, 1988 to June 1990. In support of the foregoing assertions the applicant submitted three cryptic affidavits in identical format from acquaintances of the applicant, dated February 16-18, 1991. One was by of 321 Halcon Street, who stated that the applicant "occupied a room in my home" from November 20, 1981 to December 18, 1987. Another affidavit was by of who stated that the applicant rented and occupied a room in my home" from January 9, 1988 to June 1990. The third affidavit was from Angel Salas, of Camarillo, California, who stated that during the time period January 9, 1988 to June 1990 "I was a neighbor of [the applicant] and he worked with me independently as a lawn and yard maintenance service, but we would ride together and sometime[s] work together."

When he filed his LIFE application (Form I-485) in September 2001 the applicant submitted three more equally cryptic affidavits, again in identical format, from acquaintances in Oxnard who assertedly met the applicant during the 1980s. The first was by dated June 30, 2001, who stated that he met the applicant in 1982 and "that we work at the same job and he was my neighbor for [a] long time." The second was by dated July 14, 2001, who stated that she met the applicant in 1987 and that she had "known [the applicant] from work." The third affidavit was by dated July 19, 2001, who stated that he met the applicant in 1984 and has known him through the years "at work and as a friend and neighbor." Along with these new affidavits the applicant submitted photocopies of some pay statements with handwritten entries indicating that the El Dorado had paid the applicant for work performed in pay periods ending on December 6, 1981, May 19, 1983, November 6, 1984, August 13, 1985, and October 14, 1986.

The affidavits discussed above are the ones cited by the district director as neglecting to mention the name of their common employer, the El Dorado restaurant. The language of the affidavits is ambiguous, however, as to when and where the affiants worked with the applicant. The affiants all declared that they met the applicant during the 1980s and worked or had worked with him at some time between then and 2001, the year the affidavits were prepared. None of the affiants claimed to have worked with the applicant during the specific years 1981-1987, when he was assertedly employed at El Dorado. With regard to the pay stubs cited by the district director (she mentioned those from 1984-86, but neglected to mention the ones from 1981 and 1983), the AAO does not view this documentation as conflicting with the applicant's claim to have been paid in cash. One of the statements, from 1983, does have a handwritten notation on it reading "paid cash." As for the others, they may have been paid in cash as well, since there are no indications on the statements that the applicant was paid in some other form, such as by check or bank deposit. Moreover, the record includes a note that a telephone call was made by the district office to the El Dorado in September 2003 which appears to have confirmed that the applicant was employed at the restaurant. As for the Juarez affidavit discussed in the decision, the district director correctly pointed out that it was short on details. But she then went on to declare, without further explanation, that "its amenability for verification is nil as there is no expeditious means by which [the] affiant may be contacted." While there was

no phone number on the affidavit, the affiant's address (albeit from 1991) was provided and his phone number might well have been available from directory assistance in Oxnard, California. There is no indication in the decision or elsewhere in the record that any effort was made to explore this simple avenue of contacting

In response to the notice of intent to deny, the applicant submitted five more affidavits – all of which appear to be from residents of Oxnard – containing somewhat more information about the applicant's alleged U.S. residence and employment during the 1980s. They included:

(1) A statement by dated October 31, 2002, declaring that she and the applicant "worked together at El Dorado restaurant in Oxnard, California from 1981 to 1987," though she did not indicate in what capacity.

(2) A statement by in the same format and likewise dated October 31, 2002, declaring that to her personal knowledge the applicant resided in Oxnard from 1981 to 1987 and "that I used to go and eat at El Dorado restaurant during the period mention[ed] above and met [the applicant]. He used to be a busboy."

(3) A statement by dated, September 29, 2003, that "I know [the applicant] since 1982. He has been residing in the city of Oxnard, CA. He is a friend of Mrs. who sells cloth[es] since years ago. I remember that every week used to come with her a young man, who was [the applicant]. . . . I have continue[d] my friendly relationship with [the applicant], and in some times we have celebrate[d] our and his children['s] birthdays."

(4) A statement by dated September 30, 2003, that "I have been for many years a seller of clothes, and since 1981 begin to ask [the applicant] to accompany me on his days off to collect the money of the sales performed. [The applicant] helped me to collect the money and protect me of any criminal. . . . It has been so much my gratitude that in three occasions I have celebrated his birthday."

(5) A statement by and dated September 30, 2003, that "we know [the applicant] since 1982 who in many occasions came to collect the money of the clothes that I bought from At the time [the applicant] was a young man of approximately eighteen years old and was characterized for being shy and quiet."

The district director did not discuss the merits of any of these affidavits in her decision. Her only comment was that they "failed to overcome the grounds for denial as stated in the NOID."

The AAO does not agree. The new affidavits submitted in 2003, together with the earlier affidavits from 1990 and 2001, have a cumulative evidentiary weight that cannot be dismissed as insignificant. Moreover, the pay statements from the El Dorado, together with the phone call notation confirming the applicant's employment, constitute credible evidence of the applicant's employment at that restaurant in the years indicated. Though the issue is not without some doubt, the AAO is persuaded, based on the entire record, that it is more probable than not the applicant entered the United States before January 1, 1982 and resided in the United States continuously in an unlawful status through May 4, 1988.

Accordingly, the AAO determines that the applicant has met his burden of proof. By a preponderance of the evidence he has established that he resided unlawfully in the United States for the requisite time period from before January 1, 1982 through May 4, 1988, set forth in section 1104(c)(2)(B)(i) of the LIFE Act.

The applicant's appeal will therefore be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.