



U.S. Citizenship
and Immigration
Services

LA



FILE: [Redacted]

Office: Phoenix

Date:

OCT 28 2004

IN RE: Applicant: [Redacted]

PETITION: 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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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 Interim District Director, Phoenix, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. In rendering this determination, the district director concluded that the applicant was in legal status for the first few months of LIFE legalization and, therefore, determined the applicant was statutorily ineligible to adjust to permanent residence under the provisions of the LIFE Act.

On appeal, the applicant, through his attorney, submits a photocopy of a page from his passport, with a stamped notation indicating that he had been issued a prior passport on January 28, 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 regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

The record shows that that the applicant is a class member in a legalization class-action lawsuit who filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA, on November 8, 1991. On the Form I-687 application, the applicant indicated that he first entered the United States with a nonimmigrant B-2 visitor's visa issued in October 1981 and valid for a period six (6) months from his date of admission until April 1982. [Information regarding the circumstances of the applicant's entry and status at the time of entry cannot be officially confirmed as the record does not include a Form I-94, Arrival/Departure Record].

In rendering his determination, the district director concluded that the applicant's authorized period of stay clearly had not expired through the passage of time prior to January 1, 1982, and, therefore determined the applicant was statutorily ineligible to adjust to permanent residence under the provisions of the LIFE Act. In a statement in response to the notice of intent to deny, the applicant asserted that at the time of his October 1981 entry into the U.S., he was given an authorized stay at the port of entry of only six *weeks*. However, this assertion contradicts the applicant's Form I-687, in which he specified that, at the time of his October 1981 entry into the U.S., his B-2 visa was valid for six *months*. It also contradicts the applicant's class membership affidavit as well as his November 8, 1991 testimony at the time of his LULAC class-membership interview, in which he specified that he was admitted to the U.S. in October 1981 for a period of six months.

Accordingly, in the absence of other independent, corroborative evidence, it is assumed that the applicant's period of authorized stay had not expired by January 1, 1982. However, it is still necessary to determine whether or not the applicant nevertheless violated his lawful status as a B-2 non-immigrant visitor prior to this date, and whether such unlawful status was known to the Government as of January 1, 1982.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status which was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. At the same time, the LIFE Act specifies that the unlawfulness had to have been known to the Government as of January 1, 1982.

On his LIFE application, the applicant claimed to have undertaken landscaping employment in November 1981. However, the applicant has not provided any evidence of such employment or of having violated his lawful B-2 nonimmigrant visitor status. Even assuming the applicant had in fact undertaken such unauthorized employment and assuming that employment was in violation of the terms of the applicant's status, the applicant has provided no evidence to indicate that, as of January 1, 1982, the Government was *aware* of any unauthorized or unlawful conduct on the part of the applicant.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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