



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Baltimore, Maryland

Date:

SEP 01 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 Baltimore 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 Baltimore, Maryland. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded that the applicant failed to establish that he was present in the United States before January 1, 1982 and resided continuously in the United States in unlawful status through May 4, 1988.

On appeal counsel argues that the district director erred in not considering affidavits attesting to the applicant's continuous residence in the United States since 1981. Counsel cites an internal memorandum of the Immigration and Naturalization Service (INS) in 1989 advising that, in the adjudication of legalization applications under section 245A of the Immigration and Nationality Act (INA), credible affidavits should be given favorable consideration in the absence of "full documentary proof." A photocopy of the INS memorandum and one additional letter were submitted in support of the appeal. Counsel also argues that a "passport/travel document" issued in 1990 by the Ghanaian consulate in New York certified that the applicant had been living in New York 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. The record establishes that the applicant filed a timely written claim for class membership in CSS in 1989.

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 "[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." 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).

When the applicant filed his claim for class membership in CSS in 1989, he stated on his accompanying application for temporary resident status under section 245A of the INA (Form I-687) and Form for Determination of Class Membership in *CSS v. Meese* (both dated June 30, 1989) that he first entered the United States without inspection at Detroit, Michigan on June 12, 1981. On his I-687 form the applicant stated that he had resided continuously since his arrival in the United States at 626 Grand Avenue in Brooklyn, New York. As evidence of his U.S. residence since 1981 the applicant submitted the following documentation:

- (1) A sworn affidavit by Ownsu (sp?) Kwame, dated August 29, 1989, stating that the affiant resided at 626 Grand Avenue in Brooklyn, New York, and that the applicant had "lived with me" at the subject address "since June _____ to present." The affiant apparently forgot to insert the year after June, so it is unclear whether he means 1981 or some other year. The affiant went on to state that "[t]he rent receipts and household bills are in my name and the applicant contributes toward the payment of the rent and household bills."
- (2) A sworn affidavit [redacted] dated August 30, 1989 (in the same format as the above affidavit), stating that the affiant resided at 626 Grand Avenue in Brooklyn, New York and that "the applicant . . . has lived with me at the above mentioned address since June 1981 to present." The affiant stated that "[t]he rent receipts and household bills are in my name and the applicant contributes toward the payment of the rent and household bills."

Thus, both affiants assert without further explanation that the applicant lived with them at the same address in Brooklyn. Also submitted at the time of the CSS class membership claim was a document issued by the Passport Control Officer at the Ghana Consulate General in New York, dated August 25, 1989, certifying that the applicant was born in Accra, Ghana, in 1962 and that his present residence was 626 Grand Avenue in Brooklyn, New York.. This is presumably the "passport / travel document" cited in counsel's appeal brief. The document did not state that the applicant had been residing in New York since 1981, however, as alleged by counsel. Rather, it merely certified the identity of the applicant as "a Ghanaian national *now resident in New York.*" (Emphasis added.)

When he filed his LIFE application (Form I-485) in June 2002 the applicant submitted a handwritten letter from his father-in-law, George Akoto, dated May 25, 2002, who stated that "I have known [the applicant] since December of 1981 when we first met at the Embassy of Ghana in Washington, D.C. . . . a friend of his introduced him to me. Since then [the applicant] has endeared himself to me by his good conduct, his law-abiding behavior and . . . his willingness to lend a hand when needed."

The foregoing documentation was all the evidence the district director had of the applicant's U.S. residence during the 1980s at the time he issued his notice of intent to deny in June 2003. In that notice the district director referred to the "two affidavits from friends" (1989) and the "letter from your father-in-law" (2002) and declared that "documentation in the form of affidavits and letters from personal friends, family members, and co-workers is considered to be secondary evidence, and lacks probative value without the support of credible documentary evidence, which is not present in this case." As a matter of law, the foregoing statement is incorrect. Affidavits and letters need not necessarily be supplemented by other evidence to have probative value. Rather, the probative value of affidavits and letters must be determined based on an examination of the individual documents and their cumulative evidentiary weight. In *Matter of E-M-*, *supra*, the Commissioner of the Immigration and Naturalization Service (INS) declared that "the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility" and confirmed that affidavits are "relevant documents" which warrant consideration in legalization proceedings. See 20 I & N Dec. at 82-83. The LIFE Act regulations specifically provide that "[t]he sufficiency of *all evidence* produced by the applicant will be judged *according to its probative value and credibility.*" (Emphasis added.) Thus, the district director should have examined the probative value and credibility of the 1989 affidavits and the 2002 letter in reaching his decision.

Those three documents, however, offer very little information about the applicant's alleged residence in New York during the 1980s. The two affidavits from August 1989 simply assert that the applicant lived at a certain address in Brooklyn between 1981 and 1989 without explaining how either affiant met the applicant and the nature of their interaction over the years. Both affiants assert that they lived with the applicant at the same address (though one neglected to mention as of what year), without indicating that they shared the same premises with the other affiant as well. Thus, it is not clear whether all three occupied the same space or

adjoining space. Considering the affiants both claimed to be living with the applicant at the time (1989) and to have shared a common address with him for some time, the affidavits provided remarkably few details. The affiants should have been able to furnish much more information about the applicant to support his assertion that he had resided in Brooklyn since June 1981. As for the letter from the applicant's father-in-law in 2002, it is even less helpful. [REDACTED] simply declares that he met the applicant at the Ghanaian Embassy in 1981 and has known him ever since, without providing any details about the applicant's U.S. residence in the intervening decades.

On appeal the applicant has submitted two more letters. One is from [REDACTED] of Brooklyn, New York, dated September 1, 2003, who "certif[ies] that I have known [the applicant] since November of the year 1981, when he arrived here in New York from Ghana. He was a guest in our home and for some time we offered him free accommodation in our home. . . . [T]o this day my wife and I still remember him long after he moved on with his life." The second letter, undated, is from [REDACTED] Bronx, New York, who states that "I met [the applicant] when we arrived in the country in 1981. At the time we were both in New York staying with friends, as new immigrants. We used to move around looking for odd jobs, and talk about how we were going to survive in this country. He later relocated to the Washington, D.C. area." The statement of [REDACTED] that "for some time we offered [the applicant] free accommodation in our home" seems to conflict with the applicant's statement on his I-687 form and the 1989 affidavits of [REDACTED] that he lived continuously with one or both of them in Brooklyn from 1981 onward (unless the applicant moved in with [REDACTED] sometime after August 1989). Moreover, neither of the two new letters provides any additional information about the applicant's alleged U.S. residence with [REDACTED] between 1981 and 1989.

In the AAO's view, the two affidavits and three letters discussed above lack sufficient credibility to establish the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. The documentation offers only sparse information about the applicant, and does not fully explain exactly whom the applicant was living with, and where, at various stages during the 1980s. Both of the affiants who were assertedly living with the applicant in 1989 should have been able to provide much more information than they did in their cryptic affidavits. The AAO concludes that the affidavit and letter evidence submitted by the applicant lacks the requisite probative value to prove, by a preponderance of the evidence, that the applicant entered the United States in June 1981 and was continuously resident in the United States through May 4, 1988, as alleged.

In his notice of intent to deny, as well as in his decision denying the application, the district director listed various types of primary documentation – including, *inter alia*, "employment records (in the form of tax returns)" and social security records – that could demonstrate the applicant's physical presence in the United States during the requisite years for LIFE legalization. The applicant submitted such documentation with his LIFE application, but it does not demonstrate that he resided in the United States prior to 1989. The applicant's Social Security Statement, dated June 25, 2001, lists his earnings year by year from 1990 to 2000, but not before 1990. Similarly, there is a series of wage and tax statements for the applicant covering the years 1990 to 2000, but nothing before 1990. On the I-687 form he filed in conjunction with his CSS class membership claim in 1989, the applicant stated that he was employed at a printing shop from July 1981 to October 1984 and as a messenger from November 1984 to December 1987. There are no wage and tax statements in the record for those years, however, or any other evidence of the applicant's asserted employment from 1981 to 1987. In the AAO's view, the lack of such evidence, or any other documentation of the applicant's employment in the United States during the 1980s, casts further doubt on the applicant's claim to have resided in the United States continuously from 1981 through 1988.

Counsel refers to other documentation in the record which shows the applicant to be "a bona fide member of CSS/LULAC." The class membership determination by the INS in 1989, however, was based on evidence that the applicant had been "front-desked" (*i.e.*, his application had not been accepted) when he attempted to

apply for legalization during the original filing period between May 5, 1987 and May 4, 1988. The class membership determination was not based on any finding that the applicant also fulfilled the residence requirement of having entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status through May 4, 1988. Accordingly, the documentation relating to the applicant's claim for class membership in CSS does not demonstrate that the applicant also fulfills the U.S. residence requirement.

Viewing the record in its entirety, the AAO determines that the applicant has failed to meet his burden of proof. He has not established, by a preponderance of the evidence, that he resided in the United States continuously 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 and 8 C.F.R. § 245a.11(b).

For the reasons discussed above, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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