



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Los Angeles, California

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 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

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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, Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded that the applicant had not established that he (1) resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b), (2) was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by 8 C.F.R. § 245a.11(c), and (3) was not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Immigration and Nationality Act (INA), as required by 8 C.F.R. § 245a.11(d).

On appeal the applicant asserts that he was misunderstood during his LIFE interview on June 30, 2003, due to his poor command of English, and indicated that his I-687 application (filed with the Immigration and Naturalization Service (INS) in 1990) contained the correct information about his entry and re-entry into the United States. The applicant submitted a photocopy of his original I-687 form, documentation pertaining to the parallel I-687 and I-485 (LIFE) applications of his wife, Manjit Mahal (A93 275 407), and photocopies of other evidence, already in the record, of the applicant's residence in the United States during the 1980s.

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 indicates that the applicant filed a timely claim in 1990 for class membership in LULAC.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish (1) his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, required by section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b), (2) his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, required by section 1104(c)(2)(C) of the LIFE Act and 8 C.F.R. § 245a.11(c), and (3) his admissibility to the United States, required by section 1104(c)(2)(D) of the LIFE Act and 8 C.F.R. § 245a.11(d). The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B) – Continuous Unlawful Residence

- (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 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, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

Section 1104(c)(2)(C) – Continuous Physical Presence

- (i) In general – The alien must establish that the alien was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, except that -
 - (I) an alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States; and
 - (II) brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole.

Section 1104(c)(2)(D) – Admissible as Immigrant – The alien must establish that the alien

- (i) is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act;
- (ii) has not been convicted of any felony or of three or more misdemeanors committed in the United States;
- (iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and
- (iv) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

When the applicant filed his *LULAC* class membership claim with the INS in 1990 he submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), dated March 29, 1990, in which he stated that he first entered the United States with a visa on December 12, 1981. The applicant also submitted an Affidavit for Determination of Class Membership in *LULAC v. INS*, dated March 29, 1990, in which he repeated his statement that he first entered the United States on December 12, 1981 and, added that he violated his status by overstaying his visa. Thirteen years later, in his LIFE legalization interview on June 30, 2003, the applicant made the following sworn statement: “I did enter the United States of America [o]n December 12, 1981 with B-2 visa through Canada (Vancouver). Visa good for six months.”

Thus, the applicant acknowledges that he entered the United States legally with a six-month visitor’s visa on December 12, 1981. Only after the visa expired, on June 11, 1982, did the applicant’s status in the United States become unlawful. Thus, the applicant does not meet the statutory requirement, set forth in section 1104(c)(2)(B) of the LIFE Act, of having resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988. Accordingly, the applicant is ineligible for adjustment to legal permanent resident status under the LIFE Act.

In her decision (which referenced her earlier notice of intent to deny) the district director declared that the applicant had failed to establish that he was continuously physically present in the United States between November 6, 1985 and May 4, 1988. The applicant did not address this ruling in his appeal or submit any new documentation of his presence in the United States during that time period. Though there are some cryptic affidavits in the file touching on the issue, the AAO is not constrained to pass judgment on the sufficiency of that evidence in view of the clear evidence, discussed above, that the applicant did not satisfy the “continuous unlawful residence” requirement of the statute.

In ruling that the applicant had failed to establish his admissibility to the United States in accordance with 8 C.F.R. § 245a.11(d), the district director referenced her determination in the notice of intent to deny that the applicant had “misrepresented material facts and fraudulently submitted affidavits to gain an immigration benefit in violation of section 212(a)(6)(C)(i) of the [INA].” That provision of law provides that “[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefits provided under this Act is inadmissible.” The applicant contests the district director’s determination that he committed fraud or misrepresentation, and there is no documentation of such fraud or misrepresentation in the record. Aside from this issue, the district director neglected to address section 245A(d)(2)(B) of the INA, which provides that any provision of section 212(a) (defining classes of aliens who are ineligible for visas or admission) may be waived on a case by case basis for “humanitarian purposes, to assure family unity, or when it is otherwise in the public interest,” unless the grounds for the alien’s exclusion involve certain criminal convictions (section 212(a)(2)(A) and (B), INA), drug offenses (section 212(a)(2)(C), INA), national security violations (section 212(a)(3), INA), or the likelihood of becoming a public charge (section 212(a)(4), INA) – none of which apply to the applicant. The foregoing provisions govern the grounds of inadmissibility and waivers for all amnesty applicants under section 245A of the INA (enacted as part of the Immigration Reform and Control Act of 1986) and section 1104 of the LIFE Act (enacted in 2000).

Thus, while section 212(a)(6)(C)(i) of the INA may be a valid ground to rule the applicant inadmissible to the United States, section 245A(d)(2) governs the possibility of a waiver in his LIFE application. Because section 245A(d)(2)(B) allows for the applicant’s grounds of inadmissibility (assuming they are valid) to be waived, the applicant must be accorded the opportunity to file a waiver application, and have it adjudicated, before any determination is made under section 212a(6)(C)(i) with regard to his admissibility or inadmissibility to the United States. The district director erred, therefore, in determining that the applicant had failed to establish his admissibility to the United States in accordance with 8 C.F.R. § 245a.11(d).

Nevertheless, because the record clearly establishes that the applicant was not in unlawful status prior to January 1, 1982 and did not reside in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, the applicant is ineligible for adjustment to permanent resident status. Accordingly, the issue of whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the INA is moot.

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