



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 documentation of record failed to establish that the applicant (1) entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status from then through May 4, 1988, and (2) was continuously physically present in the United States between November 6, 1986 and May 4, 1988. In reviewing the documents submitted by the applicant, the district director declared that affidavits unsupported by primary evidence lack probative value and are therefore insufficient to establish the applicant's eligibility for LIFE legalization.

On appeal counsel argues that the district director erred in denying the application on the ground that affidavits alone were insufficient evidence, rather than on the affidavits' lack of information or credibility. Counsel points out that the legal standard for establishing the applicant's eligibility in the instant proceeding is preponderance of the evidence, which depends on the factual circumstances of each case. Counsel cited *Matter of E-M-*, 20 I & N Dec. 77 (Comm. 1989), in which 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. *Id.* at 82-83.

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). In addition, the applicant must establish that he or she was continuously physically present in the United States from November 6, 1986 to May 4, 1988. See section 1104(c)(2)(C)(i) of the LIFE Act and 8 C.F.R. § 245a.11(c) and 16(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. (Emphasis added.) . . . 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-*, *supra*, "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." 20 I&N Dec. at 80. 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 (5<sup>th</sup> ed. 1979).

The district director found that the applicant failed to meet her burden of proof regarding his continuous residence and continuous physical presence in the United States during the required time periods, citing *Matter of G-*, 9 I&N Dec. 38 (Comm. 1960) ("The burden is always upon the applicant to establish that his

application merits favorable action.” *Id.* at 40.) In his decision the district director indicated that the applicant’s case rested largely on affidavit evidence and declared that “[a]ffidavits unsupported by primary evidence lack probative value. Without other evidence to support these affidavits, you have not established eligibility” for permanent resident status. As a matter of law, the foregoing statement is incorrect. Affidavits need not necessarily be supplemented by other evidence to have probative value. See *Matter of E-M-*, *supra*. Rather, the probative value of affidavits must be determined based on an examination of the individual documents and their cumulative evidentiary weight. 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 affidavits submitted by the applicant in reaching his decision.

When the applicant filed her claim for class membership in CSS in 1990, she stated on her accompanying Form I-687 (dated August 29, 1990) that she had come to the United States on August 10, 1981 and resided at three different addresses in New York between then and 1990. The addresses were listed as follows: (1) 186 Franklin Avenue in Brooklyn – August 21, 1981 to July 1986, (2) 305 Ocean Avenue in Brooklyn – 1986 to 1987, and (3) 1330 Grandview Terrace in Far Rockaway – August 1987 to the present (August 1990). As evidence of her residence in the United States during that time period, the applicant submitted the following documentation:

- (1) A sworn affidavit by [REDACTED] dated November 20, 1990, stating that the affiant resided at [REDACTED] in Brooklyn, New York, and that “the applicant . . . “lived with me at the above mentioned address” from August 21, 1981 until July 1986. 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.”
- (2) A sworn affidavit by [REDACTED] dated January 24, 1990 (in the same format as the above affidavit), stating that the affiant resided at [REDACTED] Brooklyn, New York and that “the applicant . . . lived with me at the above mentioned address” from August 14, 1985 until May 26, 1986. 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.”
- (3) A sworn statement by [REDACTED] dated October 29, 1990, who identified his address as [REDACTED] Far Rockaway, New York, that the applicant “is well known to me and has been living with me since August 1987 to present.” The affiant stated that “[a]ll the rent receipts, household utility bills are in my name and [the applicant] only contributes towards all expenses. [REDACTED] and the applicant were married in Lagos, Nigeria, in December 1986.)
- (4) Two apartment leases pursuant to which [REDACTED] leased the premises at [REDACTED] New York, for the two-year periods of July 15, 1986 - July 14, 1988 and July 15, 1988 - July 14, 1990.
- (5) A letter dated October 25, 1990 from Nigeria Airways Limited in New York City, addressed “to whom it may concern,” certifying that the applicant “was employed as a clerical assistant” from February 3, 1982 until November 28, 1985 with weekly wages of \$150.00. According to the letter, the applicant “was paid in cash throughout her period of employment from the Airline’s petty/miscellaneous cash account.” The letter was co-signed by four individuals – the manager, the assistant manager, the accountant, and the floor supervisor.
- (6) A sworn affidavit by the applicant, dated December 17, 1990, certifying that she has “been self-employed since 1985 when I left the employ of the Nigeria Airways as an office assistant.” The applicant stated that she has “been doing series of odd jobs like baby-sitting, sewing baby

dresses and whatever jobs I am able to get.” The applicant indicated that her average income was \$3,500 to \$4,000 per year and that she had not filed any income tax statements.

After filing her LIFE application (Form I-485) in November 2001, the applicant submitted another sworn affidavit, dated January 21, 2003, from [REDACTED] of Lanham, Maryland, who stated that “to her personal knowledge” the applicant had resided in the United States at [REDACTED] New York, from August 21, 1981 to July 1986, and at [REDACTED] New York, from October 1986 until sometime in 1996.

There is conflicting information in the foregoing materials as to the applicant’s alleged U.S. addresses during the mid- and late 1980s. While the applicant’s assertion in her I-687 form in 1990 that she lived at the [REDACTED] address from August 1981 to July 1986 comports with the 1990 statement of [REDACTED] (and the 2003 statement of [REDACTED]) the 1990 statement of Bunmi Oyatade indicates that the applicant lived with her at the [REDACTED] address during the time frame August 1985 to May 1986. [REDACTED] the applicant could not have resided with [REDACTED] and with [REDACTED] at same time in 1985-86. In her I-687 form the applicant asserted that she lived at the [REDACTED] address a year later – in 1986-1987. [REDACTED], in her 2003 statement, did not mention the [REDACTED] address at all and indicated that the applicant moved to the [REDACTED] Terrace address in October 1996. In her I-687 form the applicant asserted that she moved to 1330 Grandview Terrace address in August 1987, which is the same month she began living with her husband, according to [REDACTED] his October 1990 statement. But the record also indicates that [REDACTED] leased an apartment [REDACTED] from July 1986 to July 1990. The applicant has not identified this person, what relationship he has to her husband, or whether [REDACTED] is the same person. The applicant never mentioned the fact that [REDACTED] was her husband in the documentation she submitted with her CSS class membership claim in 1990, and in her I-687 form she falsely indicated that she was “never married.” In the LIFE application and accompanying Biographic Information (Form G-325A) she filed in 2001, however, the applicant acknowledged that she and [REDACTED] were married in Lagos, Nigeria, on December 13, 1986.

In the Form I-687 the applicant filed in 1990, the only absence from the United States she acknowledged between 1981 and 1988 was a two-week visit to Canada in September 1987. As aforementioned, the applicant did not acknowledge her marriage to [REDACTED] in her original Form I-687. Nor did she mention her departure from the United States to marry her husband in Nigeria in December 1986. The applicant has provided no information as to how long she was absent from the United States at the time of her marriage in 1986. In the LIFE application she filed in 2001 the applicant acknowledged yet another absence from the United States during the 1981-88 time period. On her Form I-485 the applicant stated that she returned to the United States through New York City on March 28, 1988 with a visitor’s visa that had been issued two weeks earlier, on March 14, 1988. The applicant provided no information about where and for how long she was outside the country on that occasion.

The lack of information about the duration of the applicant’s absences from the United States in 1986 and 1988 raises the question of whether she meets the continuous residence requirement set forth in 8 C.F.R. § 245a.15(c)(1). As defined in that regulation, “[a]n alien shall be regarded as having resided continuously in the United States if *no single absence from the United States has exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.” (Emphasis added.) No evidence has been submitted by the applicant indicating how long she was absent from the United States around the time of her wedding in December 1986 and prior to her return to the United States from an unidentified foreign country on March 28, 1988. If either of those absences exceeded 45 days, and no “emergent reasons” could be shown, the applicant would not have fulfilled the requirement

of continuous U.S. residence from January 1, 1982 through May 4, 1988. Even if the absences did not exceed 45 days, either or both of them could be regarded as having interrupted the applicant's continuous physical presence in the United States between November 6, 1986 and May 4, 1988. The statute provides that "an alien shall not be considered to have failed to maintain continuous physical presence . . . by virtue of *brief, casual, and innocent absences* from the United States." Section 1104(c)(2)(C)(i)(I) of the LIFE Act. (Emphasis added.) For lack of any information from the applicant about the length of time she was out of the country on either occasion and the circumstances and/or purpose of the second absence during (and perhaps before) March 1988, it is impossible to determine whether the applicant's absences were "brief, casual, and innocent," as required for her to be considered as maintaining continuous physical presence in the United States during the applicable time period. Moreover, the applicant's entry into the United States on a visitor's visa in March 1988 raises the additional question of whether she fulfills the statutory requirement (in section 1104(c)(2)(B)(i) of the LIFE Act) of having resided in the United States in a continuous *unlawful* status from before January 1, 1982 through May 4, 1988.

In the AAO's view, the inconsistent evidence about the applicant's alleged U.S. addresses between 1985 and 1988, together with the new information about her Nigerian wedding in 1986 and additional trip abroad in 1988, casts some doubt on whether the applicant was a continuous resident of the United States during those years. The applicant has not provided any evidence about the duration of her two absences from the United States in late 1986 and early 1988 – in particular, whether one or the other absence exceeded the statutory maximum of 45 days. Nor has the applicant provided sufficient information about either absence to establish that they were "brief, casual, and innocent" within the meaning of the statute and thus did not interrupt her continuous physical presence in the United States. Furthermore, it is unclear whether the applicant was in continuous unlawful status from before January 1, 1982 through May 4, 1988. Viewing the record in its entirety, the AAO determines that the applicant has failed to meet her burden of proof. She has not established, by a preponderance of the evidence, that she 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, 8 C.F.R. § 245a.11(b) and 8 C.F.R. § 245a.15(c)(1), or that she was continuously physically present in the United States between November 6, 1986 and May 4, 1988, as required by section 1104(c)(2)(C)(i) of the LIFE Act, 8 C.F.R. § 245a.11(c) and 8 C.F.R. § 245a.16(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.