



U.S. Citizenship
and Immigration
Services

12

[REDACTED]

FILE:

[REDACTED]

Office: Houston, Texas

Date:

SEP 16 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 Houston 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 clearly unwarranted
invasion of personal 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 Houston, Texas. 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 she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status through May 4, 1988. Specifically, the district director cited evidence in the record that the applicant was absent from the United States for a five-month period, April-September 1986, which exceeded the 45-day maximum allowable under 8 C.F.R. § 245a.15(c).

On appeal the applicant asserts that she was absent from the United States for less than 45 days in August and September 1986, and therefore did not interrupt her continuous residence in the United States.

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 1990.

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). The "continuous unlawful residence" requirement is further defined in 8 C.F.R. § 245a.15(c)(1), which provides as follows:

An 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.

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 her claim for class membership in CSS with the Immigration and Naturalization Service (INS) in 1990, she stated on her accompanying application for temporary resident status under section 245A of the INA (Form I-687), dated April 17, 1990, that she had been absent from the United States on two occasions since January 1, 1982. The first was December 1983 to January 1984, "to visit my family" in Colombia. The second was August 1987 to September 1987, "to visit my father" in Colombia, who had been "injured on his job and was very ill."

During her interview for adjustment of status under the LIFE Act in December 2002, however, the applicant stated under oath that, in addition to the previously indicated absences in 1983-84 and 1987, she had a third absence from the United States of nearly five months from April 1986 to September 15, 1996. The record includes a photocopy of the applicant's signed statement, dated December 20, 2002. When advised by the district director in his notice of intent to deny that her absence in 1986 exceeded the 45-day maximum and did not appear to have been due to "emergent reasons," the applicant responded by asserting that she had misunderstood her interviewer and was actually absent for less than 45 days in 1986. As explained in her appeal brief, the applicant was interviewed by someone of Asian descent who "spoke with an accent which I did not understand clearly." The applicant states that the interviewer reminded her of the information she had provided the INS in 1990 and then presented her with INS records showing that she had entered the United States in New York City with a B-2 visa on September 15, 1986. The applicant asserts that she did not remember exactly when she departed the United States in 1986, did not state that she had departed in April, and told the interviewer that she would have to consult with family members and personal records to refresh her memory. The applicant now asserts that she departed the United States for Colombia around the first week of August and returned on September 15th, so that her absence in 1986 was for less than 45 days.

In support of this assertion the applicant has submitted a series of affidavits from friends and relatives in the United States and Colombia, including:

- 1) Undated statements by the applicant's sister and brother-in-law in Colombia, translated on February 26, 2003, declaring that the applicant was present "in August of 1986" when the applicant's father underwent an eye operation in Colombia.
- 2) A statement by the medical doctor in Colombia who operated on the applicant's father, dated February 10, 2003, declaring that the applicant "was present" when the operation was performed in August 1986.
- 3) A statement by [REDACTED] a resident of Harris County, Texas, dated February 10, 2003, declaring that "I have known [the applicant] since 1983 . . . and we became good friends. I have personal knowledge that [the applicant] had to travel in the last few days of August 1986 to see her father who was in a hospital in Colombia. . . . She traveled by airplane and she left me in charge of her two children who were young at that time. [The applicant] had to come back by boat to New York in September 1986."
- 4) A statement by [REDACTED] a resident of Houston, Texas, dated February 27, 2003, declaring that "the [the applicant] was working for me for four months part-time until August 1986. [Then] she had to travel to Colombia because she had an emergency that her father needed eye surgery. I know that [the applicant] returned [i]n September 1986 because she called me from Ohio."
- 5) A statement by [REDACTED] a resident of Houston, Texas, dated February 7, 2003 (almost identical to the statement of [REDACTED] (above), declaring that "I have known [the applicant] since 1985 . . . and we became good friends. I have personal knowledge that [the applicant] had to travel in the last few days of August 1986 to see her father who was in a hospital in Colombia. . . . She traveled by airplane [and] had to come back by boat to New York in September 1986."
- 6) A statement by [REDACTED] a resident of Framingham, Massachusetts, dated February 9, 2003, declaring that "I have known [the applicant] since 1977 from Colombia. . . . I know that [the applicant] had to travel to Colombia around the end of

August 1986 because her father was very ill. She called me and told me she was traveling to Colombia. I was living in Boston in 1986. [The applicant] came back in September 1986 through Brooklyn. She called me and told me that she had come back by boat and that her father had lost an eye due to illness.”

- 7) A statement by [REDACTED], a resident of Middletown, Ohio and the applicant's niece by marriage, dated February 11, 2003, declaring that the applicant “had to make an emergency trip to Colombia because her father . . . was very sick [and] lost his sight. She left in August 1986 and return[ed] [i]n September 1986.”

In the AAO's view, the foregoing affidavits are not sufficiently credible to establish that the applicant's absence from the United States in 1986 was for less than 45 days. Only five of the eight affiants provide any information about the time frame of the applicant's departure, and three of those assert that the departure was in late August 1986, rather than early August as indicated by the applicant. Most importantly, the affidavits do not restore the credibility the applicant lost by failing to disclose on her I-687 application that she was absent from the United States during 1986. It is implausible that the applicant would have forgotten such an important trip by 1990, just four years after it took place, particularly since she remembered her other two trips of shorter duration before and after the 1986 departure. Yet the applicant did not acknowledge her 1986 absence until presented with INS records during her LIFE interview in 2002. In that interview the applicant signed a statement under oath that she was absent from the United States three times during the 1980s: December 1983 to January 1984 (23 days), April to September 1986 (five months), and August to September 1987 (three weeks). The applicant's protestations thereafter that she did not mean to say that her 1986 absence began as early as April of that year do not ring true. Even if she did find the interviewer difficult to understand, the applicant signed a *written* statement that her 1986 absence extended from *April to September*. The language of the written statement was crystal clear.

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 entered the United States before January 1, 1982 and resided in an unlawful status in the United States continuously 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).

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.