



U.S. Citizenship  
and Immigration  
Services

12

[REDACTED]

FILE: [REDACTED] Office: Los Angeles, California

Date: SEP 27 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 in 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 failed to prove that he entered the United States before January 1, 1982 and resided continuously in this country in an unlawful status through May 4, 1988. The district director also declared that the applicant had failed to furnish complete court records pertaining to a couple of arrests in the late 1980s, raising the possibility that he may have been convicted of a felony making him statutorily ineligible for permanent resident status.

On appeal counsel asserts that the applicant resided in the United States continuously from before January 1, 1982 through May 4, 1988, was not absent from the country for any period longer than 45 days during that period, and has not been convicted of a felony or three or more misdemeanors committed 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 Missouri Service Center determined that the applicant filed a timely claim for class membership in CSS.

To be eligible for permanent resident status under section 1104 of the LIFE Act an applicant must establish that he or she has not been convicted of a felony or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1). In his decision the district director declared that the applicant had failed to furnish final court dispositions for his arrests, as requested in a Form I-72 issued on February 13, 2003, the day of his LIFE interview. The AAO notes, however, that the applicant did submit court records from the Municipal Court of Los Angeles, dated February 18, 2003, pertaining to all of the arrests discussed in the interview. The court records indicate that the applicant was arrested on January 7, 1989 and charged with two misdemeanor counts of (1) driving under the influence of alcohol and (2) driving with a blood alcohol level of .08 % or more. The state's complaint was later amended to allege that the defendant (applicant) had been convicted on June 16, 1986 of a previous driving under the influence charge identical to the first misdemeanor count indicated above. According to the court records, the applicant denied the prior conviction. The state's complaint was subsequently amended again to add a third misdemeanor count – reckless driving without injury. On June 16, 1989 the court dismissed the first two counts and found the defendant (applicant) guilty of count three after a plea of nolo contendere. According to the court records, therefore, the applicant was convicted of at most two misdemeanors and no felonies in the United States. As such, the applicant is not barred by section 1104(c)(2)(D)(ii) of the LIFE Act from adjusting to permanent resident status.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish, in addition, that he or she entered the United States before January 1, 1982 and resided in the United States 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 U.S. residence" requirement is further specified in 8 C.F.R. § 245a.15(c)(1):

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.” The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are “relevant documents” which warrant consideration in legalization proceedings. *Id.* at 82-83. 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).

In connection with his claim for class membership in 1990 the applicant filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), dated February 10, 1990, and an undated Form for Determination of Class Membership in *CSS v. Meese*. In those forms the applicant asserted that he first entered the United States, without inspection, on January 12, 1981, that he resided at two different addresses in Los Angeles from 1981 to 1990 (including [redacted] from January 1981 to April 1984 and [redacted] from April 1984 to the present – i.e., February 1990), that he was employed as a “laborer” by [redacted] in Los Angeles from May 1981 to the present (February 1990), and that he departed the United States twice after his initial entry to visit his native Mexico – the first time from March 1 to March 30, 1984 and the second time from September 1 to September 16, 1987. As supporting evidence the applicant submitted a sworn affidavit from [redacted] resident of [redacted] in Los Angeles, dated December 27, 1989, declaring that “[I managed the apartments [the applicant] lived in . . . from April of 1981 to April of 1985. He paid \$60.00 per month, as there were six people living in the apartment.” The applicant also submitted a letter from [redacted] on the letterhead of the [redacted] Los Angeles, dated December 22, 1989, declaring that “[the applicant] has worked for me since May 1981 . . . is a painter . . . work[s] as an independent contractor and is paid by the cars that he paints. The only time he missed since working for me was in 1987, when he went to Mexico because a brother was ill. . . . [The applicant’s] salary is \$200.00 per week.” In addition, the applicant submitted photocopies of sales and rental receipts, utility bills, and other documents bearing dates from 1982 to 1989. The documents during the time period 1984-1989 identify the applicant as a resident of [redacted] in Los Angeles.

During the current proceeding under the LIFE Act the applicant filed a letter dated December 30, 2003 from [redacted] the owner of the rental property located [redacted] in Los Angeles, stating that “[t]he applicant has lived in our apartment . . . since December 1981.” This is the same time frame given in the appeal brief, in which counsel declared that the applicant “entered the U.S. in December of 1981 and immediately thereafter resided at [redacted] Angeles.”

The foregoing documentation contains numerous discrepancies. For example, in his I-687 form the applicant identified his first U.S. residence (from January 1981 to April 1984) as [redacted] an address confirmed by [redacted] in his 1989 affidavit (though [redacted] gave the dates as April 1981 to April 1985). In his 2003 letter, however, [redacted] stated that the applicant has lived at 5068 Argus Drive since December 1981. That is the same date indicated by the applicant’s counsel on appeal. A sales receipt in March 1984 identifies the applicant’s address [redacted] though the applicant does not claim to have moved to that address until April 1984. All rental receipts and utility

bills from 1985 onward identify the applicant's address as [REDACTED]. Counsel's statement in the appeal brief that the applicant entered the United States in December 1981 also conflicts with the information provided by the applicant in his I-687 form and the 1989 letter from [REDACTED] that the applicant began working at the auto body shop in May 1981. In his I-687 form the applicant identified his U.S. employer as "H Auto Body Shop" at [REDACTED] whereas the letter from [REDACTED] identifies the business as "H & H Body Shop" and the address as [REDACTED]. Two sales receipts, dated June 22, 1982 and September 3, 1983, appear to link the to applicant to "H Auto Body," but do not indicate in what capacity and do not identify the company's address.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I & N Dec. 582, 591-92 (BIA 1988). If the foregoing discrepancies were the only weaknesses in the applicant's case, the AAO might view them benignly. Some of the discrepancies may be explained as memory lapses. There are additional conflicts in the record, however, which undermine the applicant's claim to have resided continuously in the United States from before January 1, 1982 through May 4, 1988. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. See *Matter of Ho*, *id.*

In his decision the district director referred to the applicant's LIFE interview on February 13, 2003 in which the examiner recorded him as stating that in addition to a one-month visit to Mexico in March 1984 he was absent from the United States on another visit to Mexico for five months in 1987. An absence of that duration would have exceeded the 45-day maximum prescribed in 8 C.F.R. § 245a.15(c)(1). On appeal counsel asserts that "[t]he adjudicating officer misstated [the applicant's] testimony." According to counsel the applicant departed the United States on September 1<sup>st</sup> and returned on September 16, 1987, an absence that did not exceed the 45-day maximum. Counsel's assertion conforms with the applicant's original declarations in his I-687 and CSS class membership determination forms, filed in 1990. Those forms were much more contemporaneous with the described events than the applicant's interview in 2003, and the interview notes contain no signature by the applicant, or other acknowledgement, certifying their accuracy. So it seems conceivable that the examiner and the applicant miscommunicated during the interview, or that the applicant perhaps misspoke, though the notes record the applicant as stating that he was absent from the United States from May to September 1987.

What is clear from the record, however, is that the applicant was absent from the United States during 1983 as well and did not acknowledge this absence on his I-687 and CSS class membership determination forms in 1990 or in his LIFE interview in 2003. The evidence of the applicant's 1983 absence appears on the Form G-325A (Biographic Information) he filed with his LIFE application in January 2002. In that form the applicant stated that he was married in Mexico on September 4, 1983. Having failed to acknowledge that absence from the United States, the AAO has no way of knowing whether it exceeded the 45-day maximum prescribed in 8 C.F.R. § 245a.15(c)(1). Indeed, it seems entirely possible that the applicant did not enter the United States at all before 1983 or 1984 since the documentary evidence of his presence in the United States is much stronger from 1984 onward.

In the AAO's view, the applicant's lack of candor about his presence in Mexico at the time of his marriage in 1983, together with the evidentiary discrepancies previously discussed, fatally undermines his credibility. The AAO concludes that the applicant has failed to meet his burden of proof. He has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided continuously in the United States 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.

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