



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

Office: Los Angeles, California

Date:

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:

Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 failed to establish that he entered the United States before January 1, 1982 and resided in this country continuously in unlawful status through May 4, 1988.

On appeal the applicant submitted affidavits from two persons who assert that the applicant came to the United States in 1981, a letter from the Fontana Police Department in Fontana, California stating that “no criminal record was found” for the applicant, photocopies of two pay statements issued to the applicant in 1983 and 1984, and photocopies of two California driver’s licenses issued to the applicant in 1983 and 1984.

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 for class membership in CSS in 1995.

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.” 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).

When the applicant filed his claim for class membership in CSS with the Immigration and Naturalization Service (INS) in 1995 he indicated in his Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), dated August 31, 1995, as well as on his undated Form for Determination of Class Membership in *CSS v. Meese*, that he first entered the United States on an unspecified date in 1981. In the interview conducted by the INS on September 6, 1995 to determine his eligibility for class membership in CSS, however, the applicant testified under oath and signed a written statement that he first entered the United States on November 1, 1982. The applicant provided no explanation for this conflicting information in 1995 or at any time prior to the filing of the instant LIFE application (Form I-485) in January 2002.

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

evidence pointing to where the truth lies. See *Matter of Ho*, 19 I & N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.*

When he filed his LIFE application in 2002 the only evidence the applicant submitted of his alleged entry into the United States in 1981 was a sworn affidavit from [REDACTED] a resident of Los Angeles, dated January 12, 2002, stating that "I have personal knowledge that [the applicant] came to the United States [i]n 1981." According to the affiant the applicant worked for him part-time until 1983, when he found a full-time job. The affiant provided no details about how he "knew" the applicant came to the United States in 1981, however, or any information about his type of business or the nature of the part-time employment he allegedly gave the applicant. In his interview to determine eligibility for LIFE legalization on May 14, 2003, the applicant asserted that he entered the United States in 1981, but provided no explanation for the conflicting testimony and written statement he gave at his earlier interview in 1995. In support of his appeal the applicant submitted two more affidavits. One, dated February 1, 2004, was from [REDACTED] the applicant's uncle and a fellow resident of Selma, California, who declared that "[w]hen the applicant decide[d] to come to the United States in 1981 I was in communication with him and with his mother if any emergency would occur or for support. . . . [W]e would plan family get togethers very often. . . ." The second affidavit, dated February 16, 2004, was from the applicant's cousin, [REDACTED] also a resident of Selma, California, who declared that "I have been in communication with [the applicant] since he first came to the United States in 1981. . . . [H]e would visit my father very often when he first came to the United States." Both of the above affiants (father and son) stated that they were "aware" that the applicant resided at 1420 Las Palmas in Hollywood, California, from 1981 to March 1989.

Like the earlier affidavit in 2002, the two new affidavits submitted on appeal in 2004 provide almost no information about the applicant's alleged entry into the United States in 1981. Nor has the applicant himself provided any such evidence. Nowhere in the record has the applicant stated exactly when in 1981 he allegedly came to the United States, how he accomplished that entry, and where he crossed the border. Moreover, the applicant still has not provided any explanation for his sworn testimony and written statement on September 6, 1995 that he first entered the United States on November 1, 1982.

The other documentation submitted on appeal – including pay statements issued to the applicant by Brunner's of Beverly for work performed in August 1983 and January 1984, as well as California driver's licenses issued to the applicant on September 8, 1983 and April 17, 1984 – indicates that the applicant resided in California during that time frame. But the only evidence of the applicant's residence in California before January 1, 1982 is the three affidavits discussed above. The evidentiary weight of the affidavits, minimal at best, is fatally undermined by the applicant's own conflicting testimony in 1995 and 2003 as to whether he first entered the United States sometime in 1981 or on November 1, 1982.

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 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, as required by section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

Accordingly, 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.