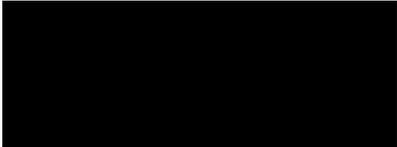




U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: Dallas, Texas

Date:

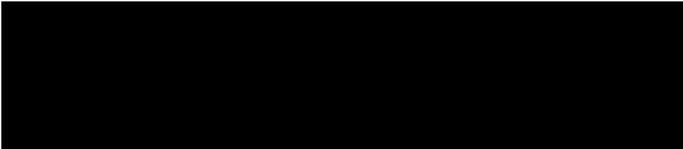
IN RE: Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Dallas 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 in Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

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 an unlawful status through May 4, 1988. In particular, the district director found that the record failed to establish that the applicant was present in the United States from January 1, 1982 through 1983.

On appeal counsel argues that the applicant has “met the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period.” Submitted in support of the appeal were photocopies of some documents that were already in the record.

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 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).

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 (5th ed. 1979).

The applicant asserts that he first entered the United States without inspection near Laredo, Texas in October 1981 and proceeded to Dallas, Texas, where he has lived ever since. According to the applicant, his first address in Dallas was at 5413 Lewis, Apt. B (October 1981 to February 1983), followed by 2238 Lovedale (February 1983 to June 1985) and 7814 Thurston (July 1985 to 1990). The record contains ample documentation of the applicant’s continuous residence in the United States from April 1993 onward, beginning with some pay statements that month from Barns Lumber and Manufacturing Company, where the applicant assertedly worked from March to November 1983. According to the applicant his first employer in Dallas was Juero’s Cafe on Gaston Avenue, where he assertedly worked as a busboy from October 1981 to February 1983. At the time he filed his application for class membership in CSS with the Immigration and Naturalization Service in 1990 the applicant submitted a sworn statement, dated April 8, 1990, that he worked at Jueros’ Cafe from October 1981 to February 1983, but

that he could not produce any documentary evidence because the cafe had closed during the intervening years. In support of that story the applicant also submitted a sworn statement from Guadalupe Gaona, dated April 5, 1990, who declared that “[the applicant] was employed at the Juero’s Cafe from 10/81 until approximately 02/83. [The applicant] was living with me at that time, and I was transporting him back and forth to work. I have also tried to assist him locating someone that knows where the previous owners are of that business, but have exhausted all possibilities known to either of us.”

Since filing his LIFE application (Form I-485) in November 2001, the applicant has submitted some additional documentation designed to demonstrate his U.S. residence before April 1983. One of the documents is a receipt from a company in Dallas called Guatex, dated June 1, 1982, recording the sale of two air conditioning window units to the applicant. The bill is of doubtful authenticity, however, since it identifies the applicant’s cell phone number. In 1982 cell phones were not available to the general public. The applicant also submitted a photocopied receipt from a company in Garland, Texas called Yardbirds, recording a sale of \$43.05. Counsel claims the date of the receipt is October 13, 1982, but the final digit is partially obscured and it looks more like October 13, 1983. More importantly, the receipt does not identify the purchaser and therefore has no little or no evidentiary value. Lastly, the applicant submitted two virtually identical letters from [REDACTED], pastor of a Roman Catholic Church in Dallas, dated January 31 and February 4, 2003, declaring that “[the applicant] has been a member of this parish for several years, since 1982.” This language is both vague and internally inconsistent. If the applicant had truly been a parish member for over twenty years, it seems doubtful that such a time span would be characterized as just “several years.” Moreover, the district director determined in a telephone call to the church that there is no record of the applicant’s membership.

Thus, the documentation submitted in this LIFE Act proceeding of the applicant’s pre-April 1983 residence in the United States is highly suspect. Viewed with a critical eye, it could be regarded as casting the applicant’s fundamental credibility in doubt. However, the AAO considers the original evidence submitted by the applicant at the time of his CSS class membership claim in 1990 – *i.e.*, the affidavit of Guadalupe Gaona – to be more credible. Bearing in mind that the affidavit was much closer in time to the events described, the AAO is willing to give the applicant the benefit of the doubt that the evidence submitted in 1990 (which accords with the applicant’s own contemporaneous declaration) accurately describes the applicant’s circumstances in the early 1980s.

Though the issue is admittedly not without doubt, the AAO concludes that the applicant has met his burden of proof. He has established by a preponderance of the evidence (*i.e.*, it is more probable than not) 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 for him to be eligible for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant’s appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.