

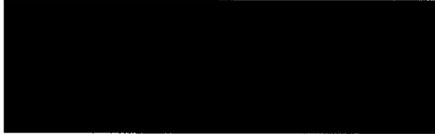
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U.S. Department of Homeland Security
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U.S. Citizenship
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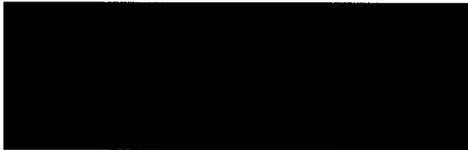
FILE: [REDACTED] Office: Seattle

Date: 01/02/2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. 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

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant failed to prove that he was physically present in the United States before January 1, 1982 and that he resided continuously in this country in an unlawful status from before January 1, 1982 through May 4, 1988. The director found that the applicant made inconsistent claims on two Forms I-687 Applications for Status as a Temporary Resident under section 245A of the INA filed by the applicant on different dates in different cities. The director noted that both forms listed different cities of residence from 1981 until the date the applications were filed, different employers and different dates of travel to Canada. The director also faulted the affidavits and other evidence the applicant had furnished for the record, particularly weekly time cards showing dates in 1984 and 1985 that were written and certified on time card stock that had not been published until 1998.

On appeal, counsel states that the director has taken a narrow view in the consideration of the documents provided in support of the application, has narrowly interpreted the provisions of the regulations, and has failed to draw a positive inference upon the documents provided to verify the residence and employment. Counsel also states that the director has failed to find the credibility of documents produced. Counsel argues the applicant entered the United States in November 1981, which was prior to the cut off date of January 1, 1982. Counsel indicates the applicant has further provided proof of his residency at various places during all of the relevant time proposed. Counsel notes that the applicant does not have any formal education and although he does understand some English, his written or spoken expertise is very limited. Counsel indicated that: "He provided the information in I-687 that if his application is accepted then he will move into that area. He filed his first I-687 at INS Turlock office in California on the advice of other persons, and believing that he can refile the I-687 application. He did file another I-687 at San Jose, California."

According to the applicant he entered the United States without inspection in November 1981. Other than his written and oral assertions, the record contains no evidence of this trip to substantiate his entry.

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. 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 regulations at 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 his claim for class membership in *CSS V. Meese*, he stated on his Form I-687 Application for Status as a Temporary Resident under section 245A of the INA signed by him on August 9, 1990 that he resided at [REDACTED] California from November 1981 until September 1987 and at [REDACTED] from November 1987 until August 1990. On his other Form I-687 the applicant stated that he resided at [REDACTED] California from November 1981 until the form was filed. Also on the August 9, 1990 Form I-687, the applicant stated that he worked as a dishwasher at the Sikh Temple in Fremont, California from January 1987 while on the other Form I-687, the applicant stated that he was self employed at various jobs during the entire period. The fact that the applicant did not accurately report on these critical documents where he resided and worked during the qualifying period undermines the credibility of his statements and on the other evidence that he submitted for the record. Counsel explanation that: "He provided the information in I-687 that if his application is accepted than he will move into that area. He filed his first I-687 at INS Turlock office in California on the advice of other persons, and believing that he can refile the I-687 application. He did file another I-687 at San Jose, California" does not overcome the director's findings concerning these discrepancies. Therefore, the applicant is denied for this reason.

Although the applicant did not list any additional employment on either of his Forms I-687, he attempted to submit documentation to show that the [REDACTED] employed him from April 6, 1984 to June 7, 1984. The director found that the applicant had furnished weekly time cards showing dates in 1984 and 1985 that were written and certified on time card stock that had not been published until 1998. Counsel states that the time cards should not be found suspect because some of the records of people working at the farm were destroyed in a fire. Counsel indicates that [REDACTED] of the [REDACTED] has testified to the fact that as the applicant's cards were destroyed in the fire in August 1998, they were recreated at a later date on time cards that were published in 1998. This explanation does not overcome the adverse finding of the director concerning these time cards as the explanation concerning the published date of the time cards and the fact that they were not original documents should have accompanied the time cards upon their initial submission as evidence, Therefore, the applicant is denied for this additional reason.

Additionally, the regulation at 8 C.F.R. § 245a.15(c)(1) defines "*continuous unlawful residence*" 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.

The record contains a photocopy of a Form for Determination of Class Membership in *CSS v. Meese* allegedly signed by the applicant on August 9, 1990 in which he states that he departed the United States in September 1987 to Canada and that he reentered this country in November 1987.

The record also contains an affidavit from [REDACTED] dated August 7, 1990 in which he states:

I have known [REDACTED] since 1981. That I have personal knowledge [sic] that he left USA on an emergency trip to Canada between 9-30-87 to 11-30-87 and that he actually lives at [REDACTED]

The record also contains the applicant's Form I-687 signed by him on August 9, 1990 in which he states that he traveled to Canada because of family illness from September 30, 1987 to November 30, 1987.

The length of this documented absence attested to by the applicant and his affiant is sufficient for a finding that the applicant did not reside continuously in the United States during the continuous unlawful residence period because his absence to Canada far exceeded 45 days in duration and no emergent reasons delaying his return to the United States were shown. Therefore, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act for this additional reason.

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 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 and 8 C.F.R. § 245a.11(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.