

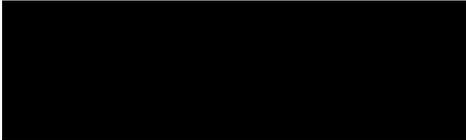
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE: [Redacted]

Office: Los Angeles

Date: FEB 25 2005

IN RE: Applicant: [Redacted]

PETITION: 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. All documents have 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded the applicant had not established that she had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. In addition, the district director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The district director determined that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act and, therefore, denied the application.

On appeal, the applicant indicates that she will submit original documents rather than photocopies of documents, to establish that she filed a timely claim to class membership in one of the requisite legalization lawsuits if requested. The applicant includes a copy of a previously submitted document, as well as a new document, in support of her appeal.

An applicant for permanent resident status under 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 any 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 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. See 8 C.F.R. § 245a.12(e). An alien applying for adjustment of status under section 1104 of the LIFE Act has the burden of proving his or her eligibility by a preponderance of the evidence.

With her LIFE Act application, the applicant submitted a photocopy of an appointment notice dated May 30, 1995, from the Immigration and Naturalizations Service's, or the Service's (now Citizenship and Immigration Services, or CIS) Legalization Office in Los Angeles, California, which bears the applicant's name, date of birth, and country of birth, and scheduled her for an interview at 9:15 A.M. on September 24, 1996, regarding the late filing of a legalization application under either the CSS or LULAC case.

The applicant also submitted an undated Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA). At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant providing a listing of addresses in the United States beginning in June 1986, with no addresses listed for the period from January 1, 1982 to May 1986. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant providing a

listing of employment in this country beginning in July 1986, with no employment listed for the period from January 1, 1982 to June 1986.

The applicant also provided an undated "Form for Determination of Class Member in *CSS v. Meese*." At question #6 of the determination form where applicants were asked to list the date of their first entry into the United States, the applicant listed "06/86."

In the notice of intent to deny issued on March 19, 2004, the district director noted that a review of the documents cited above called into question the credibility of applicant's claim to class membership. Specifically, the district director noted that only photocopied documents, rather than originals, had been submitted, and that such documents were undated and did not contain an Administrative file number, or A-file number. However, the director failed to establish that the information in these documents was inconsistent with the claims made on the application or that such information was false. If the director had questions regarding the credibility of the supporting documents provided by the applicant, a request should have been issued to her to provide the originals of the photocopied documents. The applicant's own testimony taken in context with supporting evidence in certain cases can logically meet the preponderance of evidence standard. As stated in *Matter of E--M--*, 20 I. & N. Dec. 77 (Comm. 1989), when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. Clearly, the supporting documents are relevant documents under 8 C.F.R. § 245a.14. As such, the applicant's claim to class membership must be considered in light of such testimony and evidence.

The independent and contemporaneous evidence contained in the record supports the assertion that the applicant put forth a claim to class membership and that she was scheduled to appear for an interview regarding either *CSS* or *LULAC* class membership at 9:15 A.M. on September 24, 1996, at the Service's Los Angeles legalization office. Therefore, it must be concluded that the applicant has demonstrated that she filed a written claim to class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000, and overcome this basis of the denial.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a *preponderance of the evidence* that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.12(e). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is *probably* true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989). 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 inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted seven affidavits of residence. However, six of the seven affidavits provide testimony relating to the applicant's residence in this country subsequent to 1986 and dates thereafter. The applicant provided only a single affidavit in support of her claim of residence for the period from January 1, 1982 to 1986. This sole affidavit is signed by the applicant's aunt, [REDACTED] who indicated that the applicant had lived with her at an address in Firebaugh, California, from September 1981 to June 1986. However, the applicant has failed to provide any explanation as to why she did not provide this address when asked to list all residences in this country since the date of her first entry on the Form I-687 application. Furthermore, it must be noted that the sole affidavit provided by the applicant to support her claim of residence from January 1, 1982 to 1986 is from her aunt, a family member who must be viewed as having an interest in the outcome of proceedings concerning her niece, rather than an independent and disinterested third party. The applicant provided no explanation as to why she did not submit affidavits from individuals with little or no interest in these proceedings such as neighbors, friends and acquaintances, in addition to the affidavit from her family member to support her claim of residence in this country from January 1, 1982 to 1986. Moreover, the applicant failed to advance any explanation as to why she indicated that she first entered the United States in June 1986, on both the Form I-687 application and the determination form if in fact she had lived in this country since prior to January 1, 1982 as claimed. These factors, as well as those cited above, raise serious questions regarding the authenticity and credibility of the applicant's claim of residence in this country and any and all documents submitted by her in support of that claim. Given these circumstances, it is concluded that documents provided by the applicant in support of her claim of residence in the United States for the requisite period are of questionable probative value.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the absolute lack of contemporaneous documentation pertaining to this applicant, outright and direct contradictions and conflicts in testimony, and her previously discussed admissions, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required.

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