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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

FILE:

MSC 03 252 62048

Office: LOS ANGELES

Date:

OCT 01 2008

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, Chief  
Administrative Appeals Office

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

The director denied the application because the applicant failed to demonstrate that he had resided in the United States for the requisite time period and had failed to establish that he had filed a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), during the filing period of the Immigration and Reform Control Act of 1986 (IRCA).

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on June 9, 2003, checking box "h" and noting the underlying reason for eligibility as LIFE Act (Late Amenity). However, section 1104 of the LIFE Act provides that adjustment of status may be approved for an applicant only if the applicant can prove that on or before October 1, 2000 he or she filed a written claim with the Attorney General for class membership in the *Catholic Social Service, Inc. (CSS) v. Thornburgh*, No. CIV-S-86-1343-LKK (E.D. Cal. Filed November 12, 1986) or *League of United Latin American Citizens (LULAC) v. INS*, Cv. No. 87-04757 WDK (JRx) (C.D. Cal. Filed July 22, 1987) or *Zambrano* lawsuits.

On May 27, 2004 the director of the National Benefits Center issued a Notice of Intent to Deny (NOID) the Form I-485 application. The director informed the applicant that LIFE legalization applies only to those persons who were unsuccessful in applying for a legalization program, and who subsequently applied for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuits to assert they were incorrectly denied legalization or that they were discouraged from applying. The director found that the evidence of record did not establish that the applicant had timely filed a written claim for class membership in one of the above-mentioned lawsuits. Also on May 27, 2004, the director denied the applicant's Form I-765, Application for Employment Authorization, determining that the applicant had not established *prima facie* eligibility for LIFE legalization and thus was ineligible for work authorization under this section of the law.

On January 28, 2004, the applicant requested the status of his employment authorization card and his adjustment of status. The Los Angeles Office scheduled an interview of the applicant on April 19, 2006. The record next includes an additional NOID issued by the Los Angeles Director to the applicant on April 19, 2006. The NOID does not reference the failure of the applicant to establish class membership in the pertinent lawsuits but indicates that the applicant has not provided sufficient evidence to establish by a preponderance of the evidence that he resided in the United States for the requisite period. The record includes documents submitted apparently in response to the director's NOID and received by CIS on May 6, 2008. On August 26, 2006, the Los Angeles Director issued a second NOID, noting that the record did not contain evidence that a Form I-687 had been filed during the filing period specified by the 1986 IRCA. In rebuttal, the applicant submitted a copy of a Form I-687 bearing an August 23, 1990 date but no date stamp or other evidence that it had been received by CIS. On December 22, 2006, the director determined that the applicant had not overcome the basis of denial in the NOID and denied the application. As the director ultimately made a determination on the issue of the applicant's continuous residence in the United States for the requisite period, the director adjudicated the merits of the application and that issue is properly before the AAO. On appeal, the applicant again submits the Form I-687 dated August 23, 1990 and documentation to support his claim of unlawful residence for the requisite time period and asserts that he has submitted everything requested.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

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. 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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

As noted above, in addition to the Form I-485 filed June 9, 2003, the record includes a copy of a Form I-687. On the Form I-687, the applicant lists his date of birth as October 20, 1966. The applicant indicates his addresses during the pertinent time period are: [REDACTED], Van Nuys, California from April 1981 to October 1985; and [REDACTED], Van Nuys, California from October 1985 to present. The applicant indicates that he was employed by [REDACTED], Encino, doing construction work from April 1981 to present. In addition to the Form I-687, the record includes the following documentation pertinent to the requisite time period prior to January 1, 1982 to May 4, 1988:

- A June 15, 1990 form affidavit signed by [REDACTED] living in Playa del Rey, California, who declares that he has personal knowledge that the applicant lived in Van Nuys, California from March 1984 to present. The affiant noted that the applicant would sometimes do work for him.
- A June 10, 1990 form affidavit signed by [REDACTED], living in Los Angeles, California, who declares that he has personal knowledge that the applicant lived in Van Nuys, California from August 1983 to present. The affiant noted that the applicant worked for him as a gardener occasionally since August 1983.
- A June 26, 1990 form affidavit signed by [REDACTED] who declares that she has personal knowledge that the applicant lived at [REDACTED] Van Nuys, California from May 1982 to present. The affiant noted that she and the applicant were very good friends.
- A July 19, 1993 letter signed by [REDACTED] who declares that the applicant lived at [REDACTED] Van Nuys, California from 1981 to 1985.
- A June 25, 1990 letter signed by [REDACTED] on State Farm Insurance letterhead, who states that the applicant worked for him in various capacities continuously since June of 1981.
- Copies of uncertified Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return listing the applicant as the taxpayer for the years 1985, 1986, 1987, and 1988.
- A Van Nuys Community Adult School identification card for 1987-1988.
- A California identification card dated February 10, 1988.

As referenced above, the director found the record insufficient to demonstrate that the applicant entered the United States before January 1, 1982, and resided in a continuous unlawful status for the requisite statutory time period.

Upon review of the evidence in the record, the AAO finds that the applicant has not established his entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States up to 1985. Although the applicant has submitted uncertified IRS Forms 1040 for the 1985, 1986, 1987, and 1988 years, the AAO will accept these documents as evidence that leads to the belief that the applicant's residence in the United States for the 1985 to 1988 time period is probably true. The affidavits submitted on the applicant's behalf to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence up to 1985 do not contain the necessary detail to be probative in this matter. For example the affidavits of [REDACTED] and [REDACTED] although declaring that they had personal knowledge that the applicant lived in California from May 1982, August 1983, and March 1984 respectively,

do not describe where or how these individuals met the applicant, details regarding the nature and frequency of their contact, and whether the applicant was absent from the United States during the requisite period. Although [REDACTED] and [REDACTED] indicate that the applicant would sometimes do work for them, the affiants do not provide sufficient information regarding the nature and the frequency of the work to establish the applicant's continuous residence. The affidavits are void of details of the interactions, if any, between the affiants and the applicant during the requisite time period. The affidavits are deficient in any details that would tend to corroborate the accuracy of the information in the affidavits. These affidavits are not probative in establishing the applicant's continuous unlawful residence in the United States from January 1982 through the requisite time period. Likewise, the letter signed by [REDACTED] does not provide any further detail other than a statement that the applicant lived at a certain address in Van Nuys, California from 1981 to 1985. [REDACTED] does not indicate where and how he met the applicant or provide any information regarding his interactions with the applicant. This letter also has minimal probative value.

The AAO has also reviewed the June 25, 1990 letter signed by [REDACTED] who states that the applicant worked for him in various capacities since June of 1981. This letter does not establish the nature of the applicant's work for the declarant. Moreover, it is unclear whether [REDACTED] is writing as a State Farm Insurance employer or as an employee of State Farm Insurance who has periodically used the applicant's services. It is not clear from the letter what services the applicant performed. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. As Mr. [REDACTED] failed to identify his relationship to State Farm Insurance, it is not possible to conclude that the applicant worked for State Farm Insurance. Further, [REDACTED] failed to declare that the information was taken from company records, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Although the applicant has submitted several affidavits and letters in support of his application, the AAO does not find these affidavits and letters probative for the reasons listed above. The applicant in this matter has not provided contemporaneous, credible evidence of his physical presence in the United States for the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, to 1985.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence for the duration of the requisite time period, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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