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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Milwaukee, Wisconsin Date: OCT 21 [illegible]

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Milwaukee 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.

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 Chicago, Illinois. 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 unlawful status through May 4, 1988, as required under the LIFE Act.

On appeal counsel asserts that the applicant has submitted sufficient evidence to establish his continuous unlawful residence in the United States, in accordance with the preponderance of the evidence standard applicable under the LIFE Act.

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 in 1989 for class membership in *CSS*.

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).

When the applicant filed his claim for class membership in *CSS* with the Immigration and Naturalization Service (INS) he indicated on his Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), and his Form for Determination of Class Membership in *CSS v. Meese*, both dated December 28, 1989, that he first entered the United States without inspection at San Diego, California on July 23, 1981 and proceeded to New York, where he resided for the rest of the 1980s on Long Island. The four addresses listed on the I-687 form included: (1) [redacted] in Long Island City, July 1981 to May 1986, (2) [redacted] in Bayside, June 1986 to July 1987, (3) [redacted] in Elmhurst, August 1987 to November 1989, and (4) [redacted] in East Elmhurst, starting in December 1989. The applicant also listed two employers on his I-687 form. They included (1) Manati Grocery Store at [redacted] in Brooklyn, where he worked as a "general helper" at $3.50 an hour from September

1981 to May 1986, and (2) n Brooklyn, where he worked as a machine operator at $7.50 an hour from June 1986 to the present (December 1989).

As evidence of his employment at the grocery store the applicant submitted a statement from dated December 21, 1989, that the applicant "work[ed] for me as a floor person in my Grocery Store, under the name of "Manati Grocery Store," located at Brooklyn. ... He was employed [from] September 1981 till May 1986." As evidence of his employment at Cordo Window Corp. the applicant submitted two letters from the company's office manager, In the first letter, dated October 31, 1989, stated that the applicant "has been employed in our Brooklyn plant since June 2, 1986 and earns an hourly wage of $7.50. During this time he has proven to be a responsible and reliable employee." In the second letter, dated April 27, 1990, confirmed that the applicant had been employed at the company since June 1986 and stated that "[i]n June of 1987 he took a four-week vacation." The subject vacation, according to the applicant, was a trip to his native Bolivia to visit his family from June 1 to 29, 1987.

As evidence of his U.S. residence the applicant submitted (1) statements from dated December 21, 1989 and February 9, 1991, respectively, that the applicant lived in their apartment at in Long Island City from July 1981 to May 1986, (2) a statement from dated December 27, 1989, that the applicant lived in his apartment at Bayside from June 1986 to July 1987, and (3) an undated statement from that the applicant lived in his apartment at Elmhurst from August 1987 to November 1989. The applicant also submitted four affidavits in identical format from residents of Long Island and Alexandria, Virginia, dating from October 1989 to February 1990, stating in general terms that they had known the applicant in the United States from various points of time in 1981.

In support of his LIFE application (Form I-485), filed in July 2001, the applicant submitted a sworn affidavit, dated March 26, 2003, declaring that his former landlord in Long Island City, had died, and that his former landlord in Bayside, was no longer at a reachable address. The applicant further indicated that he was paid in cash at the and therefore had no written record of his employment there. The applicant was able to locate and submit two pay statements he received from dated October 1986 and May 1987. He also submitted photocopies of three envelopes from his native Bolivia, two of which were addressed to the applicant at his Bayside address and bear postmarks in 1986 and 1987, and the other of which was addressed to him at his Long Island City address ostensibly in 1982. Though the postmark is illegible, the envelope does bear stamps honoring Bolivia's agricultural cooperation with the Republic of China from 1972 to 1982. Lastly, the applicant submitted two new affidavits, consisting of:

(1) An affidavit from a resident of Middleton, Wisconsin, dated March 15, 2003, declaring that she met the applicant in 1981 at a Bolivian restaurant in Queens called La Kantuta. She states that they often went to see the Bolivian soccer team and Bolivian bands when they came to New York, and that she socialized with the applicant at many other events and occasions in the New York City area during the decade from 1981 to 1991.

(2) An affidavit from a resident of Middleton, Wisconsin, dated March 21, 2003, declaring that he met the applicant in February 1982 at Flushing Meadows Park in Queens at a tournament involving local Bolivian soccer teams. The affiant states that he visited the applicant at his apartment in Long Island City and that the applicant was a "stocker" at a "grocery store in Brooklyn, NY, owned by a Puerto Rican." After the applicant moved to Middleton, Wisconsin, the applicant states that he visited and liked the town so much that he moved there himself.

The district director did not discuss any of the foregoing evidence. In his decision the district director simply declared, without analysis, that the applicant was "unable to provide sufficient evidence" that he entered the United States and resided in the country in continuous unlawful status for the time period required under section 1104(c)(2)(B)(i) of the LIFE Act. The AAO does not agree with that conclusion. Based on all the evidence or record, the AAO finds it more probable than not that the applicant entered the United States before January 1, 1982 and resided in the United States continuously and unlawfully from before January 1, 1982 through May 4, 1988.

The AAO determines that the applicant has met his burden of proof. He has 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 under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.12(e).

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.