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U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: Dallas, Texas Date: OCT 21 2004

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 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.

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 applicant "failed to provide evidence of [his] presence during the required time period from January 1, 1982 through 1985."

On appeal counsel asserts that the primary evidence and affidavits previously submitted, plus an additional statement submitted in support of the appeal, establish by a preponderance of the evidence the applicant's entry into the United States before January 1, 1982 and continuous residence in this country through May 4, 1988.

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 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. *See* 8 C.F.R. § 245a.14. The evidence of record, which includes a Form for Determination of Class Membership in *CSS v. Meese* or *LULAC* and a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), both of which were signed by the applicant and dated April 10, 1990, establishes that the applicant filed a timely claim for class membership.

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. (Emphasis added.) . . . 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-*, *supra*, "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." 20 I&N Dec. at 80. 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 entered the United States illegally at Laredo, Texas, in September 1981 and that he lived and worked in Texas for the rest of the 1980s – in Houston until December 1985 and thereafter in Dallas. The district director was apparently satisfied that the materials submitted with the LIFE application, together with documentation previously filed in connection with the applicant's class membership claim in 1990, were sufficient to establish the applicant's U.S. residence during the years 1986-1988. This is evident by implication in the notice of intent to deny she issued on May 12, 2003 and her subsequent decision, issued

on August 14, 2003. In the notice of intent to deny the district director advised the applicant that "[y]ou have failed to provide a preponderance of evidence that you have resided in the United States during the required period of time, specifically January 1, 1982 through 1985." The applicant was given 15 days to submit additional evidence. The applicant responded by filing some additional affidavits from friends and former co-workers. In her decision denying the application the district director acknowledged that the applicant had "provided additional affidavits from friends who had worked at Smith Pipe," but declared that "these affidavits do not match affidavits provided in earlier testimony. In first affidavit he never made claim to working with you or being your supervisor." The district director concluded that the applicant had failed to establish his U.S. residence "during the required time period from January 1, 1982 through 1985." The years 1986-1988 were not discussed in either the notice of intent to deny or the decision.

When the applicant filed his class membership claim 1990, he stated on his accompanying Form I-687 that he had resided at three different addresses in Texas between 1981 and 1990. The addresses were listed as follows: (1) in Houston – November 1981 to December 1982, (2) in Houston – January 1983 to December 1985, and (3) in Dallas – December 1985 to the present (April 1990). The applicant also listed two employers on his I-687 form: (1) J & B Testing Service Company, Inc. in Houston – December 1981 to July 1985 and (2) Old San Francisco Steak House in Dallas – August 1985 to the present (April 1990). As evidence of his residence and employment in the United States during that time period the applicant submitted the following documentation:

(1) A sworn affidavit by , dated April 14, 1990, stating that the applicant "lived with me from November 1981 to December 1982, and he resided with me continuously during this period at Houston, Texas." The affiant stated that "we share all utilities, rent and other bills and he paid his share of the bills to me, since I was responsible for the payments of the bills to the landlord."

(2) A sworn affidavit by dated April 14, 1990 (in the same format as the above affidavit), stating that the applicant "lived with me from January 1983 to December 1985, and he resided with me continuously during this period at Houston, Texas." The affiant stated that "we share all utilities, rent and other bills and he paid his share of the bills to me, since I was responsible for the payments of the bills to the landlord."

(3) A sworn statement by dated April 14, 1990, that the applicant "has lived with me at Dallas, Texas since 1985."

(4) A sworn affidavit by of Houston, Texas, dated April 14, 1990, stating that he had known the applicant since January 1982 and that they had been in constant contact over the years, speaking with each other "at least two to three times a month."

(5) A statement by dated March 26, 1990, on the letterhead of J & B Testing & Service Company, Inc. "certify[ing] that [the applicant] . . . did work for J & B Testing and Service Company, Inc. . . . from December 1981 until July 1985. During this time period, his average pay was in the range of $150-$200. This information was taken from company records." The author of the statement, Charles Boudreaux, did not identify his position with the company.

(6) A statement on the letterhead of Old San Francisco Steak House, signed by the manager, and dated April 7, 1990, "verify[ing] that [the applicant] has been employed by the Old San Francisco Steak House in Dallas, Texas, since August 1985."

After filing his LIFE application (Form I-485) in June 2002, the applicant submitted five additional sworn statements from Dallas residents, all prepared in May 2002, stating that they met the applicant in 1981 or 1982 and have stayed in contact with him since then. All of the statements are brief and contain little information beyond bare assertions of having known the applicant since the early 1980s. Also submitted with the LIFE application was a letter from the general manager of Old San Francisco Steak House in Dallas, dated May 30, 2002, "verify[ing]" that the applicant "was initially employed by us at Old San Francisco Steak House . . . in September 1985. He continued to work with us until February 2002."

At his LIFE legalization interview on January 30, 2003 the applicant was requested to submit additional documentation or contacts from his former employer in Houston to verify that he worked in the United States from 1981 to 1985. In response the applicant furnished two sworn statements from who had furnished one of the original affidavits of April 14, 1990).

(1) In the first statement, dated January 24, 2003, "certif.[ied] that [the applicant] did work for J & B Testing and Service Company, Inc. from December 1981 to July 1985." stated that "this company has been closed for 5 to 6 years," making it "very difficult to find any manager . . . to certify the [the applicant] was one of their employees." stated that he was a "supervisor when [the applicant] was an employee at this company."

(2) In the second statement, dated January 28, 2003, declared that the applicant "lived with me from January 1982 to September 1985, and he resided with me continuously during this period at Houston, Texas 77009. That we share[d] all the utilities, rent and other bills and he paid his share of the bills to me, since I was responsible for the payment of the bills to the landlord."

The district director deemed this additional evidence insufficient to establish the applicant's U.S. residence from January 1,1982 through 1985 and issued her notice of intent to deny. In response to that notice the applicant submitted a sworn statement from dated May 31, 2003, who declared that the applicant "was a co-worker at J & B Testing and Service Company, Inc., AKA the Smith Pipe Company, from December 1981 to July 1985. During this period, I remember that was employed continuously on a part-time basis as a laborer and received a weekly wage of $150 to $200 depending on the number of hours worked, which was paid in cash. His duties included cleaning and preparing pipes for installation and general labor duties. During his period of employment with this company [the applicant] resided in my former neighborhood at in Houston, Texas, while I resided at I am aware that [the applicant] has attempted to contact executives from the Smith Pipe Co. but has not been able to speak with anyone from the company as it has been closed since approximately 1992. However, I, as a former co-worker of [the applicant] remember from personal knowledge the facts herein stated."

In her decision denying the application the district director declared that "the additional affidavits from friends who had worked at Smith Pipe . . . do not match the affidavits provided in earlier testimony. In Mr. first affidavit he never made claim to working with you or being your supervisor." It is true that Mr. did not mention being a co-worker and supervisor of the applicant's in his 1990 affidavit, in which he stated that the applicant resided with him in the years 1983-1985. The AAO does not regard that omission as fatal to credibility, however, because the applicant appears to have relied on other evidence – the statement of Charles Boudreaux – to establish his employment in Houston from 1981 to 1985, while relying on exclusively to establish his second residential address in Houston. It is also true that the dates

gave in his 2003 statement on the period of his co-residence with the applicant (January 1982 to September 1985) vary somewhat from those given in his 1990 affidavit (January 1983 to December 1985). Once again, though, the AAO does not view these date discrepancies as undermining basic credibility because his memory may not have been as precise thirteen years after his initial affidavit, and nearly twenty years after the events in question. Moreover, the different dates do not cast doubt on the applicant's crucial assertion, for LIFE Act purposes, that he was residing in Texas (*i.e.*, in the United States) throughout the time period at issue, January 1982-December 1985. The statement of does raise the question of who the applicant's employer was in Houston, since he names the Smith Pipe Company, also known as J & B Testing and Service Company, as their employer without explaining why the same company would have two different names. Letterheads of the two companies indicate "The Smith Pipe Companies" and J & B Testing and Service Company, Inc. had an identical postal address in Houston. Both companies were involved in piping and shared a common address, so it seems logical that they were, if not identical, at least closely linked. On appeal an additional sworn statement was submitted by dated September 7, 1993, declaring that he and the applicant "worked together as laborers for about five years" at the "Smith Pipe Company."

In the AAO's judgment, the evidence submitted by the applicant of his employment in Houston from late 1981 to 1985 is reconcilable. Moreover, that evidence is not the only documentation of the applicant's residence in the United States during those years. The sworn affidavits of (1990) and (1990 and 2003) attest to the applicant's residence with them at two Houston addresses spanning the time period from late 1981 to late 1985. Viewing the record in its entirety, the AAO is persuaded that the applicant has met his burden of proof, by a preponderance of the evidence, that he resided continuously in the United States not only in the years 1986-1988, but also from the time of his entry in 1981 through 1985.

For the reasons discussed above, the AAO determines that the applicant has established, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in the United States continuously in an unlawful status through May 4, 1988, as required by 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.