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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

PUBLIC COPY

[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 and 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 and 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 resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required under the LIFE Act.

On appeal counsel asserts that the applicant has demonstrated his continuous U.S. residence for the time period required under the Act. Counsel addressed the two evidentiary shortcomings cited by the district director in her decision, asserted that evidence in the record refuted each of her findings, and submitted some additional documentation of the applicant's presence in the United States during the 1980s.

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 establishes 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 continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. *See* 1104(c)(2)(B) 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).

In her decision the district director stated that the applicant had failed to provide persuasive evidence of his presence in the United States from January 1, 1982 through May 4, 1988. The district director cited an employment letter from Always A'Head Consulting and declared that "Always A'Head Consulting has no record on file to show you were ever employed." The district director also stated that the applicant had failed to provide evidence of his presence in the United States for the year 1987, despite having been requested to do so. The decision issued by the district director did not engage in any further analysis of the evidentiary record.

On appeal counsel asserts that the district director erred in declaring that Always A'Head Consulting had no record on file to show that the applicant was an employee during the 1980s. The employment letter cited in the decision, dated May 5, 2003, was a sworn statement signed by [redacted] the owner of Always A'Head Consulting in Altadena, California. [redacted] stated that "[the applicant]

worked for me in the capacity of a freelance mechanic and was in my employ from 1981 until 1984." This information accords with that provided by the applicant on December 16, 1989 in the Form I-687, Application for Status as a Temporary Resident, he filed in connection with his claim for class membership in *CSS*, though the subject business at that time had an address in Los Angeles. The I-687 application was accompanied by a sworn statement from dated December 16, 1989, stating that "[the applicant] worked in my company as mechanic since 1981 to 1984." In a telephone call from the district office on June 6, 2003, acknowledged that he had no business records to confirm the applicant's employment. The district office wrote a short note about this conversation on the back of second letter. Thus, the district director was correct insofar as there is no written record of the applicant's employment at Always A'Head Consulting. Nevertheless, was consistent in the two sworn statements he prepared fourteen years apart. In both 1989 and 2003 he declared that the applicant worked in his business from 1981 to 1984.

As for the district director's statement that the applicant failed to heed her request to provide evidence of his U.S. residence in the year 1987, counsel correctly points out that the request was for evidence covering the entire applicable time period of January 1, 1982 through May 4, 1988. The applicant responded by submitting federal and state income tax returns for the years 1982-1986, so the district director must have been referring to the fact that no income tax return was furnished for the year 1987. The tax returns were not the only documents submitted by the applicant, however, as evidence of his U.S. residence in 1987 and the other years required for LIFE legalization.

With the I-687 form he filed in 1989 the applicant submitted a sworn statement from dated November 30, 1989, stating that "[the applicant] has worked in my company since 1984 to 1987. My business's name is 'Mi Casita Restaurant,' his duties dishwasher." Also submitted with the I-687 form in 1989 was an "employee verification" letter from "The Outdoor Recreation Group" in Los Angeles, dated April 13, 1988, which stated that "[the applicant] is employed by this company since March 3, 1987 to the present." The letter identified the applicant's position with the company as a "single needle operator" in the "duffles" department "on a full-time basis with no seasonal lay-off." On appeal another "employee verification" letter from the Outdoor Recreation Group was submitted, dated April 23, 2003, stating that it had employed the applicant from March 3, 1987 through August 27, 1996. The letter stated that the applicant "worked in our Duffle Department under the capacity of a Single Needle Operator. He earned $4.75 per hour plus piecework . . . 8 hours per day, 40 hours per week." In addition to this evidence of the applicant's employment in the United States, the record includes a couple of affidavits from residents of Los Angeles, dated in December 1989, declaring that from their "personal knowledge" the applicant had lived at three different addresses in Los Angeles between 1981 and 1989.

Viewing the record in its entirety, the AAO is persuaded that the documentation on file has sufficient evidentiary weight to satisfy the applicant's burden of proof, by a preponderance of the evidence, that he entered the United States before January 1, 1982 and resided in the United States continuously and unlawfully through May 4, 1988, as required by section 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.