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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Baltimore Date: OCT 2 5 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 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

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

The director concluded the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from January 1, 1982 through May 4, 1988 and, therefore, denied the application.

On appeal, the applicant states that he is appealing the director's decision because he does not think that it is based on fair arguments as the director wanted proof of residency since 1982, which was 21 years ago. The applicant further states that after a lot of searches, he provided the only proof he could find, plus the testimonies of reliable United States citizens.

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. Those regulations also permit the submission of "[a]ny other relevant document(s)." *See* 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B) – Continuous Unlawful Residence

(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 that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

Section 1104(c)(2)(C) – Continuous Physical Presence

(i) In general – The alien must establish that the alien was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, except that -

(I) an alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States; and

(II) brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole.

The "continuous unlawful residence" provision of the statute is further defined in the following pertinent regulations:

8 C.F.R. § 245a.15(c)(1) – Continuous residence

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

8 C.F.R. § 245a.15(d)(2) – Unlawful status, Nonimmigrants

The following categor[y] of aliens [otherwise eligible for legal permanent resident status and who meet the continuous residence requirement] may file for adjustment of status: An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, whose authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time, or whose unlawful status was known to the Government before January 1, 1982. Known to the Government means documentation existing in one or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

8 C.F.R. § 245a.1(d) – "unlawful status known to the government"

An alien's unlawful status was *known to the government* [emphasis in the original] only if: (1) [t]he [INS] received factual information constituting a violation of the alien's nonimmigrant status from any [entity] of the Federal government, and such information was stored or otherwise recorded in the official [INS] file . . . or . . . (4) the applicant produces documentation from a school approved to enroll foreign students under § 214.3 which establishes that the said school forwarded to the [INS] a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. A school may submit an affirmation that the school did forward to the [INS] the aforementioned report and that the school no longer has available copies of the actual documentation sent. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status.

The "continuous physical presence" provision of the statute is further defined in the following pertinent regulation:

8 C.F.R. § 245a.16(b)

> For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States [between November 6, 1986 and May 4, 1988] by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

The director outlined the evidence of record in his decision. No evidence to overcome the director's determination was provided on appeal. Therefore is determined that the applicant has failed to establish having resided in the United States from January 1, 1982 through May 4, 1988. Therefore, he is ineligible for adjustment to permanent residence under section 1104 of the LIFE Act.

Moreover, 8 C.F.R. § 245a.11(b) requires each applicant to demonstrate that he or she entered the United States prior to January 1, 1982. On his G-325A Biographic Information Form dated November 5, 1987 that was submitted with an earlier application for adjustment of status filed on the same date, the applicant states that he resided abroad in Ivory Coast, West Africa until December 1985 when he first entered the United States as a nonimmigrant student as a citizen of Senegal. Given this person's inability to meet this requirement, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

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