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: Los Angeles, California Date: OCT 26 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: Self-represented

INSTRUCTIONS:

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The district director concluded that the applicant failed to prove by a preponderance of the evidence that he 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. In particular, the district director found that the affidavits in the record lacked credibility and that, during the above time period, the applicant had an absence from the United States that exceeded the 45-day maximum allowed under 8 C.F.R. § 245a.15(c)(1).

On appeal the applicant submitted two new affidavits from individuals who declared that they met the applicant in California in 1981 and that he has resided in the state continuously (at three different addresses) since then. The applicant also argued that it is unfair to demand more detailed documentation than that already produced because it would have been much easier to produce such evidence at the time of the original amnesty program in the 1980s, had the applications not been mishandled.

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 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 in an unlawful status continuously from then through May 4, 1988. *See* section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). The "continuous residence" requirement is further specified in 8 C.F.R. § 245a.15(c)(1):

> 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.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).

The record contains solid documentation of the applicant's residence in the United States from 1986 onward. The only evidence of his U.S. residence before 1986, however, is a single, brief affidavit submitted in 1991 and the two brief affidavits submitted in support of the instant appeal in 2004. The affidavits are from

individuals who assert they have known the applicant in the United States since 1981. The applicant's claim to have resided continuously in the United States from 1981 onward, however, is undermined by his failure to disclose in the Form I-687 and the Form for Determination of Class Membership in *CSS v. Meese* he filed in March 1991 that he was married in Costa Rica on November 30, 1985. Though the applicant admitted this fact in the Form G-325A (Biographic Information) accompanying his LIFE application (Form I-485) in 2002 and asserted in his subsequent LIFE interview that his absence from the United States was only from November to December 1985, the delay in acknowledging this absence raises questions as to whether the applicant may not have entered the United States at all until after his marriage.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. See *Matter of Ho*, 19 I & N Dec. 582, 591 (BIA 1988). It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *Id.* at 591-92. The applicant has provided no further explanation regarding the conflicting information submitted with his Form I-687 in 1991 and his Form I-485 in 2002.

Moreover, even if the applicant did come to the United States in 1981 and was absent for less than 45 days at the time of his marriage in late 1985, the record is clear that the applicant was absent from the United States at a church convention in Ensenada, Mexico, from June 15, 1987 to August 10 1987. That was a period of 56 days, which exceeded the 45-day limit for any one absence from the United States, as specified in 8 C.F.R. § 245a.15(c)(1). There is no evidence that the applicant was prevented from returning earlier to the United States by any "emergent reasons" – *i.e.*, reasons that were unforeseen and outside the applicant's control. Thus, the applicant's 56-day stay in Mexico during the summer of 1987 interrupted his "continuous residence" in the United States.

Therefore, the applicant has failed to meet his burden of proof. He has failed to establish, 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 by section 1104(c)(2)(B)(i) of the LIFE Act, 8 C.F.R. § 245a.11(b) and 8 C.F.R. § 245a.15(c)(1), and 8 C.F.R. § 245a.12(e).

Accordingly, the applicant is ineligible for adjustment to legal permanent resident status under section 1104 of the LIFE Act.

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