U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI Date: JAN 19 2007

MSC 02 219 61262

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.

Mari Johnson

S Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the matter will be remanded to the director.

The director denied the application concluding that the applicant was not a member in any of the requisite legalization class-action lawsuits prior to October 1, 2000.

On appeal, counsel for the applicant asserts that the Citizenship and Immigration Services (CIS) is estopped from denying the applicant's LIFE Act application on the basis of the applicant's withdrawal of her application for membership in the LULAC class action because legacy Immigration and Naturalization Service (INS) told counsel that the applicant would have to withdraw her LULAC application in order to receive a Notice to Appear and be placed in removal proceedings. In support of such assertions, counsel included copies of correspondence to and from INS, now CIS, discussing withdrawal of the applicant's application for membership in LULAC.

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 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), *League of United Latin American Citizens v. INS*, *vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), or *Zambrano v. INS*, *vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). *See* 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 membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)", and require CIS to determine whether an alien filed a written claim for class membership as reflected in CIS indices and administrative files. *See* 8 C.F.R. § 245a.14.

The applicant initially submitted documentation addressing this requirement. Included in this documentation is a letter from the acting Miami district director, dated January 28, 1997, acknowledging that the applicant had withdrawn her "LULAC application." The record also included correspondence from counsel asserting that the applicant withdrew her application for membership in the LULAC class action at the behest of INS so that INS would issue a Notice to Appear, place the applicant in removal proceedings, and counsel could then request suspension of deportation.

The regulation at 8 C.F.R. § 245a.10 states that an eligible alien is one:

> who, before October 1, 2000, *filed* with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order" under LULAC.

(emphasis added).

The letter from the District Director, Miami, acknowledging that a claim was being withdrawn is persuasive evidence that the applicant had filed a claim in LULAC. The regulation does not require that an applicant be an actual member of the class action lawsuit, nor does it address the merits of an application for membership in such a class. The district director's decision to deny the applicant's petition based on not being a member of one of the required class action lawsuits was not proper, as an applicant is only required to have filed an application for class membership by October 1, 2000. This portion of the director's decision is withdrawn.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act reads as follows:

> In general – The alien must establish that the alien entered the United Stats 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.

As stated in 8 C.F.R. § 245.15(b)(1), a list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

Although CIS regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v.*

Cardozo-Fonseca, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

In this case the applicant has submitted extensive documentation of her presence from 1990 through the date of filing. Such evidence consists of bank records, driver's licenses, pay stubs, utility bills, various retail receipts and yearly tax records. The extent and amenability to verification of this documentation establishes that the applicant's claim of presence from 1990 to the date of filing is probably true.

However, the evidence in the record of the applicant's presence to prior to 1990 is not sufficient to establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Currently the record contains the following evidence pertaining to the applicant's entry and unlawful residence during the requisite period:

> A letter from [redacted] dated April 2, 2004, asserting in relevant part that she is "aware that in 1981 [the applicant] came to the United States but did not contact each other until about 1983."
>
> A letter from [redacted] dated April 2, 2004, asserting that he has known the applicant since "approximately 1981" and that the applicant "stayed at his house in 1982."

These two letters, written on the same day in 2004, are vague and do not detail the circumstances of the applicant's arrival or where the applicant resided during the period in question. In each letter the affiant failed to provide any relevant details or specific verifiable information relating to the applicant's residence in this country for the period at issue. Thus, the letters are not probative on the applicant's entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988.

The director issued a notice of intent to deny (NOID) on April 16, 2004 based solely on the director's determination that the alien had withdrawn her class membership application. The NOID is insufficient because it did not state a valid basis for denial. 8 C.F.R. § 245A.20(a)(2).

Accordingly, the decision of the district director is withdrawn with regard to denial based on class membership. The case will be remanded for the purpose of the issuance of a NOID that addresses the evidence regarding the applicant's entry into the United States and unlawful continuous residence during the requisite period. The director shall evaluate the evidence on the record and state in the NOID why such evidence is insufficient. The director shall issue a new decision to both counsel and the application. The new decision, if adverse, shall be certified to this office for review.

ORDER: This matter is remanded for further action and consideration.