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

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[redacted]

FILE: [redacted] Office: NEW YORK Date: FEB 08 2008

MSC 02 250 65398

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 National Benefits Center. 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, Chief
Administrative Appeals Office

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

The district director denied the application because the applicant failed to demonstrate that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director's decision was not supported by the facts and circumstances of the case and that the documentation and testimony provided by the applicant merits a favorable exercise of discretion.

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. The record indicates that the applicant filed a timely claim for class membership in *CSS*.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must also establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1) as follows: "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."

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States." The regulation further explains that "[b]rief, 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." 8 C.F.R. § 245a.16(b).

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 its amenability to verification. *See* 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 applicant 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 applicant 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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated July 11, 2005, the director reviewed several affidavits in the record – all of which referred to activities of the applicant's in the United States during 1982 and later years – and noted that none of them provided any evidence that the applicant resided in the United States prior to 1982. The director granted the applicant thirty (30) days to submit additional evidence.

In response to the NOID the applicant submitted four additional letters from acquaintances in the United States – one of whom claimed to have known him for "many years" and the other three of whom claimed to have known him since June 1981, September 1981, and sometime in 1982, respectively. In the Notice of Decision, dated September 17, 2005, the director denied the application on the ground that the applicant had failed to overcome the grounds of denial detailed in the NOID.

On appeal the applicant has provided photocopies of previously submitted documents, as well as four additional pieces of evidence: (1) a handwritten note from a medical doctor in New York, dated February 2, 2004, referring to a medical treatment of the applicant some 20 years ago; (2) a letter from the Secretary General of the Pakistan Independence Day Parade & Fair Committee, Inc. of New York City, dated December 29, 2003, stating that the applicant has been a participant in the parade since 1985; and

(3) a Certificate of Appointment from the New York City Police Department, dated March 15, 2002, appointing the applicant to the Patrol Borough Brooklyn South Asian American Advisory Council; and (4) a private bill introduced in the U.S. House of Representatives on July 27, 2000, to make the applicant eligible for permanent resident status.

The issues in this proceeding are whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

The applicant has not provided any contemporaneous documentation from the years 1981-1988 that demonstrates his residence in the United States during that time. The only evidence in the record of the applicant's presence in the United States prior to January 1, 1982, are two letters from acquaintances that were written in the summer of 2005 and submitted in response to the NOID. One is from [redacted] of Brooklyn, New York, dated August 9, 2005, who declared that the applicant lived with him from June 2001 to October 1989 at [redacted] in Brooklyn, and shared the rent and utilities payments during that time. The other is from [redacted] of Brooklyn, New York, dated July 21, 2005, who stated that he met the applicant in September 1981 and that the applicant has been very active in the community over the years.

As previously indicated, evidence must be evaluated not only by its quantity, but also by its quality. Although not required, neither of the two letters submitted in the summer of 2005 was supported by any documentation of the author's identity or presence in the United States. Neither of the two individuals provided much detail as to how they met the applicant; the basis of their recollections a quarter of a century later that their acquaintances dated from June and September 1981, respectively; and the extent of their interaction with the applicant during the rest of the 1980s. The absence of detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence for the requisite time periods seriously detracts from the credibility of his claim. In accordance with 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish his continuous residence in an unlawful status 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.

Thus, the applicant has failed to establish his entry into the United States prior to January 1, 1982, and his continuous unlawful residence and continuous physical presence in the United States for the time periods specified in section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

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