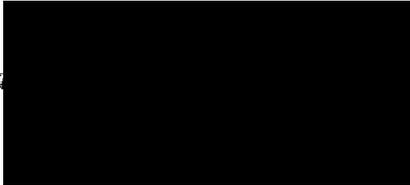




U.S. Citizenship
and Immigration
Services

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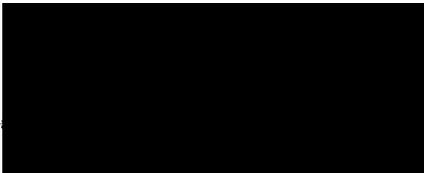
FILE:  Office: Chicago

Date: FEB 25 2005

IN RE: Applicant: 

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:



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

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

The director noted that to support his claim, the applicant had submitted an affidavit of his own, two affidavits from claimed roommates and two receipts in the French language and in a foreign currency evidencing purchases the applicant claimed to have made in 1987. The director determined that based upon the evidence submitted, the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from prior to January 1, 1982 through May 4, 1988.

On appeal, counsel states:

On November 26, 2001, [REDACTED] filed an application to adjust status as a permanent resident under the LIFE Act. In support of his application, Mr. [REDACTED] submitted numerous documents including [sic] a detailed affidavit concerning his presence in the United States. Furthermore, Mr. [REDACTED] submitted affidavits that were executed on his behalf as far back as 1989. Over one year after his application, [REDACTED] appeared for an interview at the BCIS sub office Indianapolis. Mr. [REDACTED] successfully completed the interview. Several months later, the Service requested additional information to establish physical presence in the United States prior to January 1, 1982, through May 4, 1988. Given that many years have passed, it was difficult for [REDACTED] to produce the documents requested by the Service. However, [REDACTED] submitted affidavits from himself and other individuals to support his application. [REDACTED] explained that when he initially arrived in the United States as a French speaking West African, he did not keep the type of paper work that the Service is now requesting. In spite (of) the affidavits, the Service denied [REDACTED] application as a matter of law. Mr. [REDACTED] is the father of three American born children born in 1993, 1994, and 2000 respectively. Mr. [REDACTED] is (a) hard working truck driver who has never had problems with the law. He demonstrated citizenship skills without question. The Service abused its discretion in denying the application as a matter of law. The legislative history of the LIFE Act, indicates that the Service should exercise flexibility in the type of evidence it will accept to establish physical presence. The Service failed to exercise such flexibility in this case. The decision must be reversed.

Counsel indicated that a brief and/or additional evidence would be submitted in support of the appeal on or before October 22, 2003. To date, no brief or additional evidence has been received.

As no additional information has been provided in support of the appeal, the record must be considered complete.

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. 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 continuously in an unlawful status from before January 1, 1982 through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

The regulations at 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.” 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).

When the applicant filed his claim for class membership, in *CSS V. Meese*, he stated on his Form for Determination of Class Membership signed by him on September 6, 1989 that he first entered the United States in October 1981. He also stated that the only time that he had left this country was in July 1987 when he departed to Senegal and the Republic of Guinea and that he returned to this country without inspection on August 22, 1987. However, in his affidavit dated July 5, 2001 that he submitted with his LIFE application, the applicant stated that he first entered the United States around October 10, 1981 and that he traveled back to the Republic of Guinea when his father passed away in 1984. He then stated that since coming back to the United States in 1984, that he had not left the country. The fact that the applicant did not disclose a purported 1984 trip abroad on his Determination Form and did not disclose a purported 1987 trip abroad on his affidavit undermines the credibility of his statements and on the other evidence that he submitted for the record.

As evidence of his United States residence since 1981 the applicant submitted the following documentation:

- (1) A sworn affidavit by [REDACTED] dated August 31, 1989 stating that he shared the same apartment with the applicant from October 1981 to January 1989.
- (2) A sworn affidavit by [REDACTED] dated August 31, 1989 stating that he lived with the applicant since January 1989 “to Present.”

Beside two receipts in the French language and in a foreign currency evidencing purchases that the applicant claimed to have made in 1987, the foregoing documentation was all the evidence the director had of the applicant’s United States residence from before January 1, 1982 through May 4, 1988.

The above listed documents offer very little information about the applicant’s alleged residence in this country. The two affidavits from August 1989 simply assert that the applicant lived with them at a certain address in New York from 1980 to 1989. The affiants should have been able to furnish much more information about the applicant to support his assertion that he had resided in New York since October 1980. Nothing additional was forwarded on appeal.

In the AAO's view, the two affidavits and two receipts lack sufficient credibility to establish the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. The documentation offers sparse information about the applicant and fails to reflect that he was a societal participant in this country during the specified period.

Viewing the record in its entirety, the AAO determines that the applicant has failed to meet his burden of proof. He has not established, 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 and 8 C.F.R. § 245a.11(b).

For the reasons discussed above, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

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