U.S. Department of Homeland Security
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Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

JAN 27 2005

FILE: [redacted] Office: Los Angeles Date:

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

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

The director noted that during his interview on May 29, 2003, the applicant stated that he entered the United States "on January 1981" while on his class membership questionnaire he listed his first entry into this country as occurring on May 9, 1981. The director also noted that there were discrepancies with the affidavits that he submitted in that three affiants stated that he had resided at [redacted] from 1982 to 1988 while the applicant listed that as his address from 1981 to 1986. The director concluded that the applicant failed to prove that he was physically present in the United States before January 1, 1982 and that he resided continuously in this country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel states that the applicant is not exactly sure why the class membership questionnaire has his entry date into this country as May 9, 1981. Counsel argues that the applicant does know that he entered prior to January 1982. Counsel explains that during the 1980's since his arrival to the United States, the applicant moved around quite a bit as he was a single young man who followed work and stayed where he could with friends or family. Counsel indicates that he used some addresses as his "formal address" where he could receive mail and family and friends could contact him. Counsel further states that this is why there are discrepancies.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, 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. Section 1104(c)(2)(B) of the LIFE Act states:

> (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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.
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> (ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

The record shows that that the applicant supported his claim for class membership in a legalization class-action lawsuit by submitting an Affidavit for Determination of Class Membership in League of United Latin

American Citizens v. INS (LULAC) signed by the applicant on April 10, 1990. On the affidavit, he indicated that he first entered the United States at San Ysidro, California on May 9, 1981. On appeal, counsel states that the applicant is not exactly sure why the class membership questionnaire has this entry date into this country. It is also noted that the applicant used May 9, 1981 as his arrival date into this country on a Form I-130 Petition for Alien Relative that he filled out for his father listing himself as the beneficiary on October 17, 1994.

According to the applicant he either entered the United States through the Port of Entry at San Ysidro, California in January 1981 or on May 9, 1981. Other than his written and oral assertions, the record contains no evidence to substantiate either entry.

The record contains a Form I-687 Application for Status as a Temporary Resident under section 245A of the INA signed by the applicant on April 10, 1990. In that document, (which also states that he first entered on this country on May 9, 1981), the applicant lists only one absence from the United States after January 1, 1982. That was from May 5, 1986 to June 1, 1986 to visit his family abroad. The record does not show that the applicant was forthcoming when he listed his absences. For example, the applicant submitted his marriage certificate, which establishes that he was in the Philippines for his wedding that was held on December 25, 1984. Additionally, he indicates that he last entered the United States on June 8, 1986 at San Francisco using a nonimmigrant visa and that he violated his status by overstaying. In addition, the record indicates that the applicant has a son born in the Philippines in March 1988, indicating that the applicant may have been in the Philippines at some time in 1987 as well.

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

An applicant must first establish his entry into the United States prior to January 1, 1982. The applicant has not done so. As stated above, the inference to be drawn from the documentation provided shall depend on the *extent* of the documentation. The applicant provided no contemporaneous documentation and affidavits that contradicted information he provided. The evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in the regulations at 8 C.F.R. § 245a.2(12)(e).

The record is devoid of any documentation establishing the applicant's entry to the United States before January 1, 1982. The record also shows that the applicant provided only partial listings of his entries and exits from this country when required to do so and that he has failed to establish precisely when he first entered the United States. Therefore, it is determined that he has failed to establish timely entry and continuous residence in the United states for the required period.

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

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