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

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MAR 02 2005

FILE:



Office: Portland

Date:

IN RE:

Applicant:



PETITION: 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. All documents have 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, Portland, Oregon, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director concluded the applicant did not meet the threshold requirement of being a class member. This determination was based on the fact that the applicant's previous application for class membership had been revoked due to his having provided fraudulent applications in connection with an immigration benefit. In addition, the director found that the applicant had failed to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant, through his attorney, asserts that given the extent of supporting evidence which he has provided, the denial of his application was unwarranted. In addition, the applicant asserts that basing the denial of his claim to class membership on a prior revocation of employment authorization constitutes not only an abuse of discretion but a denial of due process.

An applicant for permanent resident status under 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 any 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), *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 class membership before October 1, 2000. The regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

An applicant for permanent resident status must also 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. 8 C.F.R. § 245a.11(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 amenability to verification. 8 C.F.R. § 245a.12(e).

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).

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).

In an attempt to establish continuous unlawful residence since prior to January 1, 1982, the applicant submits the following:

- A photocopy of a store cash register receipt dated September 14, 1982, which appears to relate to the purchase of [REDACTED] typewriter. The receipt does not indicate the identity of the purchaser;
- A photocopy of a postal communication recording an attempt to deliver a registered letter from India which was sent to the applicant. The communication carries a postmark date of July 26, 1987;
- A photocopied receipt dated January 10, 1985 from the Pacific Coast Khalsa which is made out to the applicant;
- A photocopied personal money order dated December 30, 1986, which was prepared by the applicant;
- A photocopied receipt from [REDACTED] Lancaster, California. The receipt does not indicate the name of the purchaser;
- An affidavit from Amarjeet Singh, a resident of India, attesting to having accompanied the applicant in 1981 to a travel agent and provided him with the funds to travel to Thailand, after which the applicant proceeded to his final destination, the United States;
- An affidavit from [REDACTED] who attests to having known the applicant since 1983, and to the applicant having resided in the U.S. since April 1983;
- An affidavit from [REDACTED] who attests to the applicant having resided in the U.S. since February 1981; and
- An affidavit from [REDACTED] who attests to the applicant having visited the affiant in Canada from January 10, 1988 to January 25, 1988.

In his notice of decision, the director determined that the applicant's previous application for class membership had been revoked due to his having provided fraudulent applications in connection with an immigration benefit. The record indicates that on June 18, 1997, the District Director, San Francisco, issued a Final Revocation of the applicant's application for class membership in the CSS v. INS legalization class-action lawsuit. The application had been revoked due to the applicant having provided documentation notarized by an individual subsequently convicted of Conspiracy to Create and/or Supply Fraudulent Documents. Nevertheless, as the applicant had previously registered as a class member on October 15, 1990, the revocation of his class membership does *not* render him ineligible for filing a subsequent application for adjustment to permanent resident status under the LIFE Act.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The affidavits and contemporaneous evidence submitted by the applicant in support of his application are lacking basic and necessary information or details and, as such, fall far short of containing what such a document should include in order to render it probative for the purpose of establishing an applicant's continuous unlawful residence during the period in question.

Several of the photocopied store receipts provided by the applicant do not indicate the name of the customer or purchaser. The affidavit from Amarjeet Singh indicates that, in 1981, the affiant provided the applicant with financial assistance enabling him to travel to the U.S. However, there is no further indication that this affiant -- who remains a resident of India -- is in a position to attest to the applicant's continuous residence in the U.S. during the period in question.

In addition, the applicant has provided only one affidavit attesting to his residence in the U.S. prior to January 1, 1982. In light of the fact that the applicant claims to have continuously resided in the U.S. since February 1981, his inability to provide additional third-party attestations of residence raises serious questions regarding the credibility of the claim. It should also be noted that many of the affiants do not provide their phone numbers, thereby failing to provide a convenient means by which they might be contacted for purposes of further verification.

Given the minimal number of third-party statements and affidavits attesting to the applicant's continuous residence in the U.S. since prior to January 1, 1982, along with the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982 through May 4, 1988, as required.

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