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U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: DALLAS TX

Date: NOV 03 2005

IN RE:

[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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The district director in Dallas, Texas denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided in this country continuously in unlawful status through May 4, 1988. According to the district director the applicant had provided only "affidavits which are not verifiable, and no other type of documentation up until 1984" to establish his presence in the United States during the applicable time period for LIFE legalization.

On appeal counsel asserts that the applicant has submitted verifiable affidavit evidence of his continuous unlawful residence and employment in the United States from before January 1, 1982 through May 4, 1988, meeting the preponderance of the evidence standard applicable under the LIFE Act.

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* (or *Thornburgh*), 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 record indicates that the applicant filed Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), on June 19, 1990. This application is accepted as evidence of class membership.

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).

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." The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are "relevant documents" which warrant consideration in legalization proceedings. *Id* at 82-83.

It is noted that the applicant was born on August 13, 1966 and therefore did not reach 18 years of age until August 13, 1984. As the applicant matured into adulthood he was able to provide more extensive

- maintain a relationship.
8. An affidavit from [REDACTED] dated January 2, 2004, including address and phone number of the affiant, indicating that affiant has known the applicant since 1977, that affiant and applicant attended school together in Mexico and then met in Lake Side, California in 1981.
 9. IRS Forms W-2 for tax years 1984, 1985, 1987, and 1988 in Mr. [REDACTED] name.
 10. Employment verification letter signed by [REDACTED] stating that the applicant was employed by Mr. [REDACTED] California between May 1985 and May 1986.
 11. An affidavit from [REDACTED] indicating that he and applicant left the United States on May 10, 1987 together and that the two saw each other again in June 1987 in San Jose, California.
 12. An affidavit from the applicant [REDACTED] indicating that he left the United States in May 1987 and returned on May 30, 1987.

The record therefore does not support the statement in the Notice of Intent to Deny referenced above that the applicant did not provide evidence of his presence during the required time period from January 1, 1982.

The evidence provided is also apparently verifiable. The only attempt to verify the information listed that is documented in the file is a reference in the officer's notes from 7/19/90 to a phone call made by an INS officer to Hans Lodge. The notes indicate that the INS officer did not speak to the person who wrote the letter the applicant provided, but to her mother, the restaurant owner, who did not verify that the applicant was employed there during 1983. The applicant did not use his correct name or social security number while working at the Hans Lodge and therefore there is no record of his employment on file at the restaurant. The owner did not remember the applicant. However, it does not appear that any attempt was made to contact the person who wrote and signed the letter. It also does not appear that any attempt was made to contact any of the other individuals who provided affidavits concerning the applicant's presence in the United States, despite the fact that all but one [REDACTED] provided addresses and several provided phone numbers.

There are some inconsistencies in the record, for example the Form I-687 indicates that the applicant lived in Illinois from September 1983 to December 1984 while the [REDACTED] affidavit indicates that he lived in California until November 1983 and the [REDACTED] affidavit establishes his Illinois residence as beginning in December 1983. The record is generally consistent that the applicant lived in the El Monte/Pasadena CA area upon arrival in the United States in 1981, that he moved to Illinois some time late in 1983, that he returned to Pasadena in late 1984. Further, several people made affidavits, providing addresses and in some cases phone numbers swearing that the applicant was present in California and Illinois, and thus in the United States, during the time period. Also, while there is documentation in the file that indicates that the applicant went to Mexico in May 1987 to marry his fiancée, there is also information that the applicant traveled to Mexico at that time to care for his sick fiancée. There is no resolution of this issue in the file and it is conceivable that the applicant married his fiancée while in Mexico and that he visited her because she was seriously ill. In any event, the evidence consistently points to the conclusion that the applicant was outside the United States for a period of less than one month, and that he did not break his continuous residence in the United States. The minor inconsistencies discussed above do not undermine the extensive documentation submitted in support his assertion that he resided continuously in the United States from before January 1, 1982 through May 4, 1988.

The evidence in the record is more than sufficient to establish that it is "probably true" that the applicant

continuously resided in the United States during the requisite time period. Given the applicant's circumstances, the absence of documentation such as income tax, extensive employment or bank records is reasonable; in the absence of such records the applicant provided sufficient relevant information, including numerous apparently verifiable affidavits in support of his application. In fact, the affidavits taken together indicate in detail where the applicant lived during a period in which he moved often, where he played soccer, where he did odd jobs to support himself and with whom he lived, worked and played soccer. Viewing the record in its entirety, and based on the foregoing discussion of the evidence, the AAO finds it more probable than not that the applicant entered the United States before January 1, 1982 and resided in the United States continuously and unlawfully from before January 1, 1982 through May 4, 1988. The AAO determines that the applicant has met his burden of proof, 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 under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.12(e).

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.