



U.S. Citizenship
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FILE:

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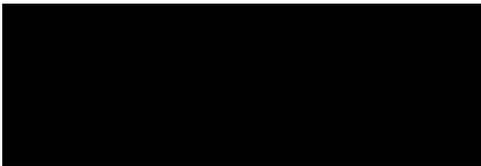
IN RE: Applicant:



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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel for the applicant asserts that the applicant has resided continuously in the United States from January 1, 1982 through May 4, 1988, and states that the director failed to give proper consideration to all of the evidence. Counsel does not submit additional evidence on appeal.

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.

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. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B)(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 that were most recently in effect before the date of the enactment of this Act shall apply.

“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.

On August 11, 2007, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had failed to establish the requisite continuous residence. The director noted that the applicant had submitted questionable affidavits and supporting documents in an attempt to establish his continuous residence since 1981. The director also noted that although the applicant testified that he had resided in the United States since 1981 and that since he entered he first departed for India in July 1987, his passport was issued in Cairo, Egypt, on May 2, 1983. The applicant was granted thirty days to respond to the notice.

The record reflects that in response to the NOID, the applicant's attorney stated that the only evidence available to establish the requisite continuous residence were affidavits and letters. Counsel submitted a notarized letter and four affidavits (two with updated address and contact information) that had been previously provided.

In the Notice of Decision, dated September 17, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to submit sufficient evidence to overcome the reasons stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status during the requisite period. The applicant submitted letters of employment and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits & Letter

The applicant submitted sworn affidavits from: [REDACTED], sworn to on August 28, 2001, each attesting to knowing the applicant since 1981; [REDACTED] sworn to on March 21, 2002 and [REDACTED] sworn to on March 30, 2002, each attesting to knowing the applicant to reside in the United States since 1981. However, neither [REDACTED] indicates whether they first met the applicant in the United States, and none of the four affiants state how they dated their acquaintance with the applicant, and whether the applicant has been a continuous resident since January 1, 1982.

The applicant also submitted a notarized letter, dated March 31, 2002, from [REDACTED] General Secretary of the Hindu Center, Inc., located in Flushing, New York, stating that the applicant had been an active member of the temple since September 1981. [REDACTED] states that although the applicant lived in Los Angeles until 1989, he found time to participate in the center's activities in New York.

Contrary to counsel's assertion, the applicant has submitted a questionable letter and questionable affidavits in support of his application. Although the applicant submitted a letter and affidavits stating that he has resided in the United States since 1981, and he testified that he had resided in the United States since 1981 and that since his entry he first departed for India in July 1987, the record of proceedings reflects that the applicant's passport was issued in Cairo, Egypt, on May 2, 1983. The passport evidence, therefore, indicates that the applicant was outside the United States in May 1983 which he had not disclosed. In addition, the record of proceedings reflects an Application for

Asylum and for Withholding of Removal, Form I-589, signed on May 14, 2008 by [REDACTED] (A89 204 151), the applicant's spouse, which adds further doubt on the applicant's claim. Specifically, the Form I-589 indicates that the applicant married [REDACTED] on January 29, 1982, in Bandala, Punjab, India; that the applicant had two children born in India on November 28, 1982, and on September 7, 1985; and, that the applicant has been living in the United States since 1989. Mrs. [REDACTED] also states on her Form I-589 that she first came to the United States with her children in 1994. Also, the letter from [REDACTED], referenced above, is tenuous. It is unlikely that, as [REDACTED] stated in the letter, the applicant lived in Los Angeles until 1989, and during that same period he participated in the Hindu Center's activities in New York starting in 1981. Contrary to counsel's assertion, applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record.

These unresolved discrepancies cast further doubt on whether the applicant's claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affiants or the letter writer included any supporting documentation of the affiant's presence in the United States during the requisite period, nor did they indicate how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 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 amenability to verification.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.