

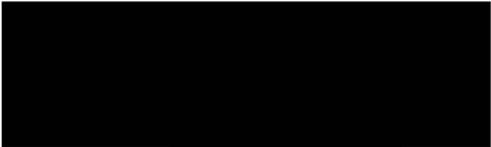
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Services

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FILE:



MSC 02 141 68516

Office: NEWARK

Date: **JUL 29 2008**

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Newark, 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, the applicant reasserts his eligibility and states that he has resided continuously in the United States from January 1, 1982. The applicant 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 September 6, 2006, 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 on November 7, 2002, the applicant appeared for a citizenship test, and he was caught cheating. The applicant was granted thirty days to respond to the notice.

The record reflects that the applicant's response to the NOID consists only of a statement reasserting that he has resided in the United States since 1981, and stating that he is unable to submit additional evidence because all of the evidence that he had was lost or has been destroyed.

In the Notice of Decision, dated October 20, 2006, 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 establish continuous residence for the requisite period.

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 and affidavits as evidence to support his Form I-485 application. Here, the submitted evidence is not relevant, probative, and credible.

Affidavits & Letters

In an attempt to establish his continuous residence during the requisite period, the applicant submitted:

- 1) Two letters from [REDACTED] of the St. Augustine Church, located at [REDACTED] [REDACTED] New Jersey, dated December 16, 1991, and February 3, 2002, stating that the applicant has been a registered member of the parish since 1981 and that he regularly attends religious services;
- 2) Affidavits from [REDACTED] stating that he personally drove the applicant to the airport when the applicant departed to Ecuador on August 20, 1987 to visit his mother;
- 3) An affidavit from [REDACTED] sworn to on December 9, 1991, stating that he has known the applicant since November 1981, and that he worked with the applicant at the Zebra Ladies Apparel factory in New York. [REDACTED] does not state whether the applicant has been a continuous resident since that time;
- 4) An affidavit from [REDACTED], sworn to on November 15, 1991, stating that he has known the applicant since 1982, and that he played Soccer with the applicant and his brothers on neighborhood streets. [REDACTED] however, does not state when in 1982 he first became acquainted with the applicant and whether he has been a continuous resident since 1982;
- 5) An affidavit from [REDACTED], sworn to on November 29, 1991, stating that he has known the applicant since December 15, 1981, and that he met the applicant at a social and sports

club in the Bronx, New York. [REDACTED] continuous resident since 1982; and,

however, does not state whether he has been a

- 6) An affidavit from [REDACTED] sworn to on November 27, 1991, stating that he learned that the applicant was in the United States in November 1981. [REDACTED] however, does not state whether he has been a continuous resident since that time.

The record reflects that the applicant has submitted questionable letters and affidavits in support of his application. The applicant submitted letters and affidavits stating that he has resided in the United States since 1981, and that he had departed for Ecuador in August 1987 and returned to the United States in September 1987. In addition, on his Form I-687, signed on June 30, 1992, the applicant indicates only one absence, from August 20, 1987 to September 25, 1987. However, the record of proceedings reflects that the applicant also submitted an Application for Asylum and for Withholding of Removal, Form I-589, filed on February 28, 1994, which was accompanied by a Biographic data Form G-325A, signed by the applicant on January 18, 1994. The information provided on these forms contradicts his claim that he entered the United States in 1981 and resided continuously since that time. On both forms, the applicant indicated that he entered the United States on January 1, 1988. Also, on his G-325A, the applicant indicated that he had resided in Ecuador from January 1961 to January 1, 1988, and that his residence in the United States began on January 1, 1988. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record.

The above unresolved discrepancies casts considerable 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.

Also, 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. None of the affiants or the letter writer indicated how they dated their acquaintance with the applicant in the United States, 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.