

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 01 317 60286

Office: TAMPA

Date: JUN 04 2009

NAME: 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Tampa, Florida. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director concluded that the applicant failed to establish that he had applied for class membership in one of the requisite legalization class action lawsuits prior to October 1, 2000, as required under section 1104(b) of the LIFE Act.

On appeal, counsel asserts that the applicant did file a timely application for class membership in one of the legalization class action lawsuits, and that the director overlooked all of the supporting documentation in the file.

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. See 8 C.F.R. § 245a.14.

When the applicant filed his LIFE Act application on August 13, 2001, the record included the following documentary evidence that he had filed an application for class membership in *LULAC* before October 1, 2000, each of which conforms with one of the illustrative list of documents in 8 C.F.R. § 245a.14.

- A Form I-687, Application for Status as a Temporary Resident, signed by the applicant, with a stamp of the Miami District Office dated March 22, 1991.
- A Form for Determination of Class Membership in *League of Latin American Citizens v. INS (LULAC)*, signed by the applicant, also dated March 22, 1991.

A letter from the Miami District Office to the applicant, dated July 18, 1994, stating in the first sentence that “[o]n or about 26 March 1991 you applied for status as a class member under the terms of the court order in *LULAC vs. INS*.”

Another letter from the Miami District Office to the applicant, dated July 18, 1996, stating once again in the first sentence that “[on] or about 26 March 1991 you applied for status as a class member under the terms of the court order [in] *League of Latin American Citizens (LULAC) vs. INS*.”

In his decision denying the LIFE Act application in March 9, 2006, the director erroneously focused on a Legalization Front-Desk Questionnaire the applicant filed with the Vermont Service Center in January 2001, and a letter from that office to the applicant, dated May 7, 2003, which was apparently returned by postal authorities as undeliverable. The director proceeded to deny the application on the basis of those two documents, which are irrelevant to the Form I-485 application filed under the LIFE Act. The director completely ignored the four documents cited above, dated from 1991 to 1996, which clearly show that the applicant filed an application for class membership in *LULAC* before October 1, 2000, in conformance with the regulatory requirements under the LIFE Act.

Based on the foregoing discussion and the evidence of record, the AAO determines that the applicant filed a timely claim for class membership in *LULAC*, in accordance with section 1104(b) of the LIFE Act. Therefore, the AAO concludes that the applicant is a class member in *LULAC*, as required by section 1104(b) of the LIFE Act, and we overturn that part of the director's decision that concludes otherwise. We turn now to the application for permanent residence (Form I-485).

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

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.

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).

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Furthermore, in order to qualify for certain immigration benefits, an applicant must establish that he or she has no disqualifying criminal convictions. An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. *See* section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

In addition, section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA), which is generally applicable to all aliens seeking admission to the United States, specifies that an alien is inadmissible if he or she has been convicted of a “crime involving moral turpitude” (other than a

purely political offense), or if he or she admits having committed such crime, or if he or she admits committing an act which constitutes the essential elements of such crime.

Under the LIFE Act regulations a crime involving moral turpitude cannot be waived as a ground of inadmissibility, and therefore bars an alien absolutely from admission to the United States. See 8 C.F.R. § 245a.18(a)(2)(i).

The record shows that the applicant was arrested and convicted on two different occasions in the State of Florida on criminal charges of domestic violence:

- (1) a February 1, 1999 conviction for one count of violating section 784-03 of the Florida Penal Code – *Battery Domestic Violence*. The applicant was sentenced to one year in jail and one year of probation. [REDACTED]
- (2) a December 12, 2001 conviction for one count of violating section 784-03 of the Florida Penal Code – *Battery Domestic Violence*. The applicant was sentenced to one year of probation. [REDACTED]

On the basis of these misdemeanor convictions, the applicant was issued a Notice to Appear (Form I-862) dated January 24, 2002, for a removal hearing before an immigration judge. The applicant was charged with being removable from the United States on account of his convictions for two or more crimes involving moral turpitude, in violation of section 237(a)(2)(A)(ii) of the Immigration and Nationality Act. The record indicates that the applicant admitted the allegations regarding the two criminal convictions noted above. The immigration judge found *prima facie* evidence to sustain the charges, but issued an order dated February 27, 2003 agreeing to terminate the case to allow the application for permanent residence to be considered by the director.

The AAO has reviewed all of the evidence and documents in the file in their entirety as well as the statute under which he was convicted and we conclude that the applicant is not eligible for permanent resident status on account of his convictions for two crimes involving moral turpitude. See *Keungne v. U.S. Attorney General*, 561 F.3d 1281 (11th Cir. 2009). There is no waiver available for a conviction for a crime involving moral turpitude. Section 245A(d)(2)(B)(ii); 8 U.S.C. § 1255a(d)(2)(B)(ii).

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