

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L2

FILE:

MSC 02 247 63599

Office: DETRIOT

Date:

MAR 04 2009

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

The director denied the application on the grounds (1) that the applicant failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and (2) that the applicant failed to establish that he filed a timely written claim 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 the applicant asserts that the director did not properly evaluate the evidence in the record.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, that 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.

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).

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 its amenability to verification. See 8 C.F.R. § 245a.12(e).

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.* 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 applicant 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 has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

Although the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of India who claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 4, 2002.

In a Notice of Intent to Deny (NOID), dated April 7, 2002, the director noted that the applicant admitted at his LIFE legalization interview that he entered the United States on July 28, 1986 at Detroit Metro Airport with an “Inspector” present with his parents and sister. The director further noted that the applicant entered on the said date as an F-2 child of an F-1 student and later changed status to a H-4 on February 8, 1987. The director indicated that a copy of the Form I-94 (Arrival/Departure record) and a verbal acknowledgement by the applicant (recorded on a video tape) that he entered the United States on July 28, 1986, is credible evidence that the applicant entered the United States lawfully as opposed to unlawfully before January 1, 1982. The director concluded that based on the evidence of record, that the applicant is statutorily ineligible to adjust status under the LIFE Act. The applicant was granted 30 days to submit rebuttal evidence.

In response, the applicant submitted a letter dated May 5, 2003 written by his father stating that the applicant was a victim of fraud perpetrated by their attorney and some immigration officials, that the applicant did not file for class membership under *CSS v. MEESE*, that the applicant’s signatures were forged on the Form I-687 (application for status as a temporary resident) and on other documentations for CSS, and requests the director to “expose this fraud, recognize wrong doing, assign accountability, and bring forth persons who had acted in reckless and vicious manner to destroy lives of innocent people.”

On June 30, 2003, the director issued a decision denying the application. The director indicated that based on the admission by the applicant’s father in his May 5, 2003 letter that the applicant did not file for class membership, did not attend any CSS interview, and that his signatures on the documentation for CSS were all forged, and on a thorough review of the record, that the applicant did not file for class membership, and is therefore ineligible to adjust status under the LIFE Act. The director also indicated that the information provided by the applicant in response

to the NOID did not overcome the fact that he made a lawful entry into the United States on July 28, 1986, and therefore is ineligible to adjust status under the LIFE Act.

On appeal, the applicant asserts that the director did not properly evaluate the evidence of record, and requests the director to delay the decision, investigate the alleged fraud perpetrated against the applicant and take appropriate action against the perpetrators.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

There is no contemporary documentation from the 1980's that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since August 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following five years until July 28, 1986, the date he entered the United States on an F-2 visa.

The AAO finds that documentation in the record clearly indicates that the applicant did not enter the United States before January 1, 1982 as claimed. A copy of a Form I-94 arrival/departure records in the file confirms that the applicant entered the United States at Detroit airport on July 28, 1986, and subsequently changed status to H-4 on February 8, 1987. Furthermore, copies of Ann Arbor Public Schools Report to Parents show that the applicant registered and attended classes at one of the public schools from 1986/1987 school year onwards. This information is in accord with other credible documentation in the record indicating that the applicant entered the United States for the first time in 1986. Thus, contrary to the applicant's claim that he entered the United States illegally before January 1, 1982 and resided continuously in an unlawful status through the requisite period required for legalization under the LIFE Act, the information discussed above unequivocally shows that the applicant entered the United States legally on July 28, 1986 and remained in valid legal status throughout the requisite period for LIFE legalization. Therefore, the applicant is statutorily ineligible to adjust status under the LIFE Act.

The applicant claims that he was allegedly defrauded by his prior attorney who forged his signatures on the CSS documentation. The applicant did not submit any documentation in support of his assertion. A review of the records shows that there is no G-28 in the record. The record reflects that the applicant was listed as a dependent on his parents' Forms I-687 and other CSS documentation, and that his parents signed the forms under penalty of perjury. There is no indication that someone other than the applicant's parents completed and signed the forms. United States Citizenship and Immigration Services (USCIS) is not responsible for action, or inaction, of the applicant's representative.

At this late stage, the applicant cannot avoid the record he has created. As noted above, the Form I-687 and other accompanying documentation were prepared and signed by the applicant's parents. The content of the Form I-687 is an indelible part of the record and cannot be disavowed at this late stage. Furthermore, the record unequivocally shows that the applicant entered the United States legally on July 28, 1986. The applicant has not provided any documentation to dispute this very fact.

For all the reasons discussed above, the AAO concludes that the applicant has not met the requirements for adjustment of status under the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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