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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
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Services

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FILE:

MSC 01 307 60390

Office: NEW YORK CITY

Date: MAY 06 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:

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 New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground 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 director erred in denying the applicant because the applicant did not show that he was “front desked” and that the applicant has established class membership because he was previously granted employment authorization as a CS-1 member prior to October 1, 2000.

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.

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.

In a Notice of Intent to Deny (NOID) dated May 22, 2007, the director notified the applicant that he is ineligible to adjust status under the LIFE Act because he had not established that he applied for class membership under one of the legalization class action lawsuits as required. The director indicated that the applicant did not travel outside the United States until April 1988, and therefore could not have been “front desked” at some point before May 12, 1988. The director also noted that the applicant admitted that he did not apply for class membership in one of the legalization class action lawsuits. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, counsel asserts that it is not a requirement that an applicant for adjustment under the LIFE Act must be “front desked” to establish that he qualifies as class member in one of the legalization class action lawsuits. Counsel contends that the applicant was granted employment authorization as a CS-1 class member and should be sufficient evidence to establish that the applicant is a class member for purposes of adjustment under the LIFE Act.

On July 9, 2007, the director issued a Notice of Decision denying the application on the ground that the information submitted by the applicant in response to the NOID was insufficient to overcome the grounds for denial.

The applicant filed a timely appeal, asserting that the director erred in his decision and referring to a copy of the applicant's employment authorization in the file as evidence that the applicant is a class member under CSS legalization class action lawsuit, and that the decision by the director to deny the application is arbitrary and should be reversed.

The record reflects that the applicant applied for and was granted employment authorization under 8 C.F.R. § 274A.12(c)(22). Under 8 C.F.R. § 245a.14(a), an employment authorization document is an acceptable evidence of class membership in one of the legalization class action lawsuits. Thus, the AAO agrees with counsel that the director erred in his decision to deny the application on the ground that the applicant failed to establish class membership in one of the legalization class action lawsuits. Accordingly, the denial of the application by the director on the ground that the applicant failed to establish that he registered for class membership in one of the legalization class action lawsuits required under 8 C.F.R. § 245a.14, will be withdrawn.

Consistent with its plenary power under 5 U.S.C. § 557(b) to review each appeal on a *de novo* basis, the AAO will also review the evidence of record relating to the applicant's claim of continuous unlawful residence and physical presence in the United States during the requisite periods for legalization under the LIFE Act.

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).

"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." (Emphases added.)

"Continuous physical presence" is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: "An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States." (Emphasis added.) The regulation further explains that "[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States." (Emphasis added.) 8 C.F.R. § 245a.16(b).

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 and been physically

present 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The documentation submitted by the applicant in support of his claim to have entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988 consists of the following:

- A letter of employment from [REDACTED], personnel manager at AM-CARRI Development Inc. in Jamaica, Queens, New York, dated August 9, 1981, stating that the applicant was employed from May 10, 1980 as a poster supervisor, and was paid \$300.00 per week.
- A copy of a residential Lease agreement between the applicant and Beck Realty Inc., Landlord, for [REDACTED], dated January 3, 1980, for a two-year term from January 15, 1980 through January 14, 1982.

- Photocopied envelopes with postmarks that appear to have been altered by hand, addressed to the applicant at the addresses he claims in the United States during the 1980s.
- Affidavits – dated in 1992, and 2003 – from individuals who claim to have known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility. The documents are not probative or credible.

The letter of employment from AM CARRI Development Inc., does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the author did not identify the applicant's address during the period of employment, did not indicate whether the information about the applicant was taken from company records, and did not indicate whether such records are available for review. In addition, [REDACTED] did not indicate the period the applicant was employed at the company. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed by the company as indicated. Thus, the letter of employment has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The photocopied residential lease agreement between the applicant and Beck Realty Inc., for the time period January 15, 1980 through January 14, 1982, does not appear to be genuine. The lease agreement does not include a notarial stamp or other official markings to authenticate the date indicated on the lease. Nor is the lease supplemented by copies of rental receipts, utility bills, or other documentation to show that the applicant actually resided at the Bronx, New York, address during the years indicated. In addition, the address on the lease – [REDACTED] Bronx, New York – is contrary to the address stated by the applicant on the Form I-687 (application for status as a temporary resident) dated March 17, 1992, for the same period. On the Form I-687, the applicant states his residential address during the years 1980 to 1982 as [REDACTED], Bronx, New York. The inconsistency noted above casts doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the residential lease agreement has no probative value as evidence of the applicant's continuous residence in the United States during the years 1980 to 1982, much less in subsequent years up to May 4, 1988.

The photocopied envelopes addressed to the applicant in the record, have illegible postmarks which appear to have been altered by hand. The original envelopes have not been submitted in the file. Thus, the envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period for adjustment of status under the LIFE Act.

As for the affidavits in the record – dated in 1992 and 2003 – from individuals who claim to have known the applicant during the 1980s, they have minimalist or fill-in-the-blank formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant – in 1980 and 1981 respectively – the affiants provide remarkably little details about the applicant’s life in the United States, and their interaction with him over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants’ personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive evidence of the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has 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, as required under section 1104(c)(2)(B)(i) of 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.