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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2



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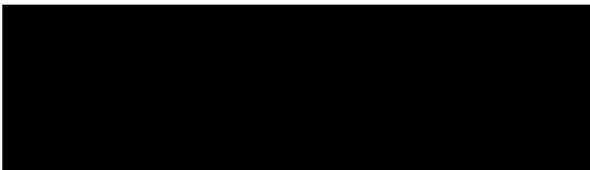
IN RE:

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 office that originally decided your case. If your appeal was sustained, or if your case 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, California Service Center on August 1, 2006. The applicant filed a motion to reopen/reconsider on August 31, 2006. The director granted the motion on September 21, 2006. The Director, Cleveland denied the application on September 24, 2007. The applicant filed an appeal with the AAO on October 24, 2007 and the appeal was dismissed on June 22, 2010. On July 14, 2010, the applicant requested that the AAO withdraw its decision and provide him with cassette tapes mentioned in a letter from the Freedom of Information Act (FOIA) Unit. On July 21, 2010, the AAO notified that applicant that it did not have jurisdiction over the FOIA decision. On August 11, 2010, the applicant requested that the AAO reopen the matter. The FOIA Unit complied with the applicant's request on September 1, 2010. On October 25, 2010, the AAO reopened the matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The matter is now before the Administrative Appeals Office (AAO) on motion. The application will be remanded.

The district director denied the application because the applicant had failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant reaffirms his claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 and asserts that he has submitted sufficient evidence in support of such claim. The applicant included copies of previously submitted documentation as well as new documents in support of his appeal. On May 4, 2011, the AAO requested evidence to establish that the applicant was in the United States during the requisite time period. On May 25, 2011, the AAO received counsel's response to the request for evidence (RFE). Therefore, the record is complete.

An applicant for permanent resident status under 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 any 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*). 8 C.F.R. § 245a.10.

In the alternative, an applicant may demonstrate that his or her spouse or parent filed a written claim for class membership before October 1, 2000. However, the applicant must establish that the family relationship existed at the time the spouse or parent initially attempted to apply for temporary residence (legalization) in the period of May 5, 1987 to May 4, 1988. 8 C.F.R. § 245a.10.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(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 in the United States for the

requisite periods, is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

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 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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 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 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has met this burden.

The record includes the following documents in support of his claim of residence in the United States during the requisite period:

- The applicant's original Internal Revenue Service (IRS) Forms W-2 for 1985, 1986, 1987, and 1988;

- Original statements of earnings for the applicant from Cuyahoga Community College for 1985, 1987, and 1988;
- The applicant's official transcripts from Cleveland State University indicating that the applicant was enrolled at the university from the summer of 1987 to the fall of 1988;
- The applicant's official transcripts from Chancellor University indicating that the applicant was enrolled at the university from the fall of 1984 to summer of 1986;
- Original correspondence addressed to the applicant with postage stamps dated 1982, 1983, 1984, and 1986; and
- Declarations from [REDACTED]

The contemporaneous documents submitted by the applicant appear to be credible. The declarations and other documentation submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses. Upon review of the totality of the record, although the AAO has some doubt as to the truth, the record contains sufficient relevant probative, and credible evidence that leads the AAO to believe that the claim is "probably true" or "more likely than not." Thus 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).

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation – (i) In general. –Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant was issued an F-1 student in 1985 and again on July 3, 1989 in [REDACTED]. F-1 visas are issued to aliens who have a residence in a foreign country which he or she has no intention of abandoning and who are visiting the United States temporarily for business or temporarily for pleasure. Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B). On July 31, 1989, the applicant arrived in New York and was admitted to the United States as an F-1

student. To obtain such a visa and admission, the applicant must have willfully misrepresented a material fact. The AAO finds that the admission into the United States by willfully misrepresenting a material fact renders the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 245(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." There is evidence in the record of proceeding that the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability on December 3, 1990. However, there is no evidence that the director adjudicated the Form I-690.

In proceedings for application for waiver of grounds of inadmissibility under section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* 8 C.F.R. § 245a.2(d)(5).

ORDER: The director's decision is withdrawn. The appeal is remanded for further action including the adjudication of the Form I-690, and the entry of a new decision consistent with the above discussion. Should the decision be adverse to the applicant, the director shall certify the decision to the AAO for review.