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**U.S. Citizenship
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FILE:



Office: Los Angeles

Date: **JAN 26 2005**

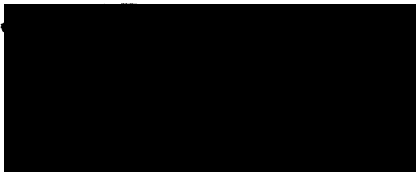
IN RE:

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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director noted that the applicant was interviewed concerning her LIFE application and stated that although she wasn't sure, she thought that she might have entered the United States with a visa through Hawaii in August 1981 at the age of seventeen. The director found that the applicant had failed to provide evidence to support her 1981 entry. The director also found that there were inconsistencies between the applicant's testimony and the information provided on her application for temporary residence and that the affidavits that the applicant submitted were without corroborating evidence. The director determined that the applicant failed to prove that she was physically present in the United States before January 1, 1982 and that she resided continuously in this country in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal counsel states:

The District Director abused her discretion by ignoring timely filed evidence supporting Ruth Sayo's Application for Adjustment of Status under the LIFE Act. On March 13, 2003 Ruth Sayo was interviewed pursuant to her application for benefits under the Legalization portion of the LIFE Act. At that time an I-72 request for further evidence was requested to support the continuous residency requirement. In April of 2003 the Service timely received three supporting letters that were summarily dismissed because "the two envelopes from Elma are not legible and the one for Pee Pakingan in Hong Kong, the date appears to be altered." The Service summarily dismissed evidence submitted in their request in an arbitrary and capricious manner which give rise to an abuse of discretion.

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.

To be eligible for adjustment to permanent resident status under the LIFE Act, 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. 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.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

The record shows that that the applicant supported her claim for class membership in a legalization class-action lawsuit by submitting an affidavit dated October 25, 1989. In that affidavit, the applicant stated that she entered the United States initially on August 26, 1981 through Hawaii without a visa. She also stated that she had left the United States "on two occasions, from 5/10/83 to 6/15/83 and from 2/1/88 to 2/22/88."

On appeal, counsel refers to three supporting letters and envelopes that related to correspondence to the applicant from [REDACTED]. Only the envelopes were forwarded for the record and they were addressed to the applicant at her addresses that she held in Los Angeles in the late 1980's and early 1990's. The envelopes do support the applicant's claimed residence at those addresses during that time period.

In this case, the applicant has made a claim to an illegal entry into the United States from The Philippines through Hawaii without a visa on August 26, 1981. At her interview, the applicant stated that she might have entered the United States with a visa through Hawaii, but wasn't sure. Therefore, we have two claims of entry into Hawaii in 1981, one without a visa and one where she might have had a visa. In this case, if the applicant did enter this country in 1981 as claimed, she would likely have been in possession of a nonimmigrant visa issued to her in The Philippines as the record shows that she was able to obtain that type of visa in her home country in 1983 and again in 1987.

The only evidence that the applicant produced to establish that she was in the United States in 1981 is an employment letter from [REDACTED] manager of The Dog House, a pet grooming business in Milwaukie, Oregon dated May 1, 1983. This letter indicates that the applicant was an employee for that firm from "Sept. 1, 1981 to present."

In this case, the applicant claimed that she might have entered the United States with a visa on August 26, 1981 and then begun work for a pet grooming business on September 1, 1981. If this scenario had happened, it must be then determined whether the applicant violated a lawful status with a visa, (as claimed), prior to this January 1, 1982, and whether the Government as of that date knew such unlawful status.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status that was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. At the same time, the LIFE Act specifies that the unlawfulness had to have been known to the Government as of January 1, 1982.

Because of the applicant's conflicting statements regarding her matter of entry, she has not clearly established that she entered the United States without a visa in 1981. Additionally, if she did enter with a visa, she has not shown that she was in unlawful status because she hasn't shown that her visa expired prior to January 1, 1982 or that her employment was known to the government prior to January 1, 1982. For these reasons, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

Additionally, an applicant for permanent resident status must establish continuous residence in the United States in an unlawful status since such date and through May 4, 1988. *See* 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 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. *See* 8 C.F.R. § 245a.12(e).

In an attempt to establish continuous unlawful residence since August 1981, as claimed, until May 4, 1988, the applicant furnished the following evidence:

- (1) An employment letter from [REDACTED] manager of The Dog House, a pet grooming business in Milwaukie, Oregon dated May 1, 1983 indicating that the applicant was an employee for that firm from "Sept. 1, 1981 to present."
- (2) A letter from [REDACTED] dated November 5, 1989 indicating that the applicant was employed by him to perform childcare duties and to clean his apartment from August 5, 1983 until March 27, 1986.
- (3) An undated letter from the owner of Silk Plus Flowers & Trees in Los Angeles indicating that the applicant worked at the firm from March 1988 "to the present."
- (4) An envelope dated "March 16" from the Philippines addressed to the applicant at 201 S. Medio Drive in Los Angeles, California.

- (5) An envelope dated August 24, 1985 from Hong Kong addressed to the applicant at [REDACTED] in Los Angeles, California.
- (6) An envelope from the Philippines with an illegible postmark addressed to the applicant at [REDACTED] in Los Angeles, California.
- (7) A Form 1040A US Individual Income Tax Return for 1984 filed by [REDACTED] listing the applicant as a dependant child.

The documents listed above offer little information about the applicant's alleged residence in this country during the 1980s. In the AAO's view, the three employment letters, three envelopes and the 1984 tax return lack sufficient credibility to establish the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988. The documentation offers only sparse information about the applicant, and does not fully explain exactly whom the applicant was living with, and where, at various stages during the 1980s.

Viewing the record in its entirety, the AAO determines that the applicant has failed to meet her burden of proof. She has not established, by a preponderance of the evidence, that she resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Therefore, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act for this second reason.

Beyond the decision of the director, the regulation at 8 C.F.R. § 245a.15(c)(1) defines "*continuous unlawful residence*" 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.

The record reflects that the applicant was issued a nonimmigrant visa at Manila in The Philippines on December 29, 1987. The record shows that she used that visa to enter the United States on February 22, 1988, more than 45 days later. The length of this documented absence alone is sufficient for a finding that the applicant did not reside continuously in the United States during the continuous unlawful residence period. Finally, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act for this third reason.

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