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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[Redacted]

DEC 16 2003

FILE [Redacted]

Office: National Benefits Center

Date:

IN RE: Applicant: [Redacted]

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: [Redacted]

PUBLIC COPY

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted you. 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
for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under section 1104 of the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Missouri Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded the applicant had not established that she had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000 and, therefore, denied the application. The director also determined that the applicant could not derive status through her husband under the provisions of the LIFE Act, because she and her spouse were married on May 17, 2002, a date after the expiration of the legalization application period from May 5, 1987 to May 4, 1988.

On appeal, counsel states that Citizenship and Immigration Services (CIS) made an error in denying the applicant's LIFE application.

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 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 8 C.F.R. § 245a.10. That same regulation provides that, 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.

The applicant has not provided evidence of having applied for class membership. There is no evidence in Citizenship and Immigration Services records that she applied for class membership. The applicant bases her claim for benefits under the LIFE Act on her spouse's application for class membership. However, neither counsel nor the applicant has provided evidence that her spouse ever applied for class membership. While the applicant's spouse possesses an Alien Registration number, A93 084 717, that may indicate he is a class member in one of the requisite legalization lawsuits, the record contains a photocopy of a State of Florida Marriage Record that reflects that the applicant and her husband were married on May 17, 2002 in Fort Lauderdale, Florida. As the applicant was married on May 17, 2002, the requisite relationship to her husband did not exist when he may have attempted to apply for legalization in the May 5, 1987 to May 4, 1988 period.

Therefore, the applicant cannot derive status from her husband under section 1104 of the LIFE Act. *Eligible alien* means an alien (including a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period).... 8 C.F.R. § 245A.10.

Counsel contends that the applicant and husband resided as common-law partners since August 22, 1988. Even if that were to be considered a legal union, it did not commence during the May 5, 1987 to May 4, 1988 period. The applicant cannot qualify for permanent residence under section 1104 of the LIFE Act because she was not married to her husband during the one year period.

Counsel insists that the applicant is eligible under a different part, section **1504** of the LIFE Act, Application of Family Unity Provisions to Spouses and Unmarried Children of Certain Life Act Beneficiaries. Aliens who wish to apply for Family Unity benefits under section 1504 must do so on a separate application, rather than make the request within a section 1104 proceeding such as this. It is noted that an applicant under section 1504 would still have to show that the principal alien had filed a timely application for class membership.

The application for permanent residence under section 1104 cannot be approved because the requisite relationship to her husband did not exist when he may have attempted to apply for legalization in the 1987-88 period. That is the only application which is before this office on appeal.

Given her inability to meet that requirement, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

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