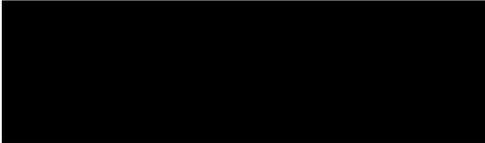


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U.S. Department of Homeland Security
Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



FILE:



Office: NATIONAL BENEFITS CENTER

Date:

OCT 02 2006

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).

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact 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, Director
Administrative Appeals Office

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

On appeal, counsel states that the applicant's husband is a class member and that she should derive eligibility from him.

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), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). 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. She bases her claim for benefits under the LIFE Act on her husband's application for class membership. To support her claim that her husband applied for class membership, the applicant submitted photocopies of her husband's Form I-687 Application for Status as a Temporary Resident and Form I-689 Legalization Application Receipt. These documents demonstrate that the applicant's husband's legalization application was timely filed and accepted and he would not therefore have had a need to join a lawsuit for those who were not permitted to apply. Moreover, even if the applicant's husband were to have timely filed for class membership, the applicant married her husband on July 29, 1991. The requisite relationship to her husband did not exist when he may have attempted to apply for legalization in the 1987-88 period. *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.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) did not cite any regulations pertaining to the marriage requirements for those seeking derivative benefits under the LIFE Act. According to counsel, section 1504 of the LIFE Act does not state that only marriages in existence from May 5, 1987 to May 4, 1988 create eligible spouses. Counsel insists it was Congress' intent to unite families, not divide them. In the alternative, counsel requests that CIS issue the applicant a Notice to Appear before the Immigration Judge and commence removal proceedings so that the applicant may also take advantage of other forms of immigration relief.

Pursuant to 8 C.F.R. § 245a.31, an alien currently in the United States may obtain family unity benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

- (a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;
- (b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and
- (c) If applying for family unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485 pursuant to Subpart B.

Counsel correctly argues that under section 1504 and the corresponding regulations, the applicant only has to establish that he or she is the spouse of an eligible alien. However, obtaining benefits under section 1504 of the LIFE Act is a separate and distinct procedure from obtaining benefits under section 1104 of the LIFE Act.

Under section 1504, the benefit sought is protection from removal. Under section 1104, the benefit sought is permanent residence. As discussed above, under section 1504, the eligibility of a spouse or child is determined by the derivative applicant having entered the United States prior to December 1, 1998, maintained residence from that date, and being married to the eligible applicant at the time his or her application for family unity benefits is adjudicated. However, under section 1104, the eligibility of the spouse or child is determined by the derivative applicant having the requisite relationship to the applicant when he or she may have attempted to apply for legalization in the 1987-88 period.

The application for permanent residence under section 1104 cannot be approved for the reason stated above. That is the only



application which is before this office on appeal. There is no evidence that an application for family unity, Form I-817 was ever filed. Regardless, the decision of the director regarding family unity, if adverse, cannot be appealed.

Given her inability to meet the requirements, 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.