

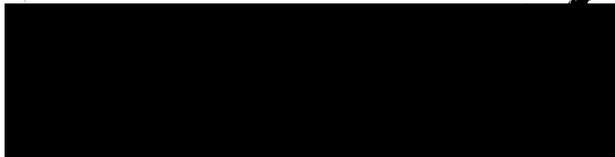
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U.S. Department of Homeland Security
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FILE:



Office: National Benefits Center

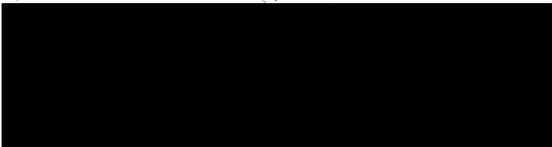
Date: FEB 19 2004

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 National Benefits Center. 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 Director, Missouri Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director concluded that the applicant had not established he 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, the applicant asserts that he "was discouraged from applying" for class membership in the *LULAC* lawsuit because, he was told, "the class suit was closed." In a subsequent letter to the AAO counsel for the applicant, repeating the substance of a previously submitted statement, alleged that he sent a letter to the Immigration and Naturalization Service (now Citizenship and Immigration Services, or CIS) in 1998 requesting that the applicant be allowed to adjust status under the *LULAC* class action lawsuit. According to counsel the INS incorrectly returned the correspondence to the applicant, stating that the time period to file a claim for class membership in *LULAC* had expired. Counsel indicates that the applicant did not hold on to the request for class membership, but that INS (now CIS) should have kept a record of it. Counsel has also submitted a series of sworn statements from friends and relatives of the applicant declaring that the applicant entered the United States unlawfully in December 1981 and has resided in this country since then.

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.

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. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

The applicant filed a timely application for temporary resident status as a special agricultural worker (SAW) under section 210 of the Immigration and Nationality Act (INA) on October 20, 1988. The application (which was processed under a prior A-number for the applicant, [REDACTED]) was denied on July 29, 1991. The applicant filed an appeal which was dismissed by the Legalization Appeals Unit (predecessor to the AAO) on December 19, 1994. An application for SAW status, however, does not constitute an application for class membership in any of the legalization class-action lawsuits, as required under section 1104(b) of the LIFE Act. Furthermore, the LIFE Act contains no provision allowing for the reopening and reconsideration of a timely filed and previously denied application for temporary resident status as a special agricultural worker under section 210 of the INA.

While the applicant and his counsel claim that an attempt was made in 1998 to apply for class membership in *LULAC*, no documentary evidence has been provided to corroborate the claim. Since the applicant had a pre-existing A-file based on his earlier SAW application, a written claim for class membership in *LULAC* could have been incorporated in that file. The fact that it was not raises the fundamental question, which neither the applicant nor counsel can allay due to their apparent failure to retain the pertinent document, of whether an attempt was actually made in 1998 to file an application for class membership. The applicant has not provided any of the documents listed in 8 C.F.R. § 245a.14 which could demonstrate that he applied for class

membership in *LULAC* prior to October 1, 2000, as required under section 1104(b) of the LIFE Act. Nor are there any records within CIS which indicate that the applicant applied for class membership in *LULAC*.

Based on the evidence of record, therefore, it is concluded that the applicant has failed to establish that he filed a written claim for class membership in *LULAC*, or either of the other two legalization lawsuits, before October 1, 2000, as required under section 1104(b) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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

1-23-2004 / aaoihv01
[REDACTED]