

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE:



Office: National Benefits Center

Date JUL 20 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:

Self-represented

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

The director concluded that the record did not establish the applicant had applied for class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

On appeal, the applicant asserts that he sent a legalization questionnaire to an Immigration and Naturalization Services (INS) office in Washington, D.C. but never received an answer. He also asserts that INS offices in Chicago and Los Angeles lost thousands of claims.

The appeal was filed on behalf of the applicant by [REDACTED], who filed a Form G-28, Notice of Appearance as Attorney or Representative. [REDACTED] acknowledged on the form that he is neither an attorney nor an accredited representative (within the meaning of 8 C.F.R. § 292.1), but stated that he was an "immigration consultant for over 30 years." As specified in 8 C.F.R. § 292.1(a)(3)(ii), an applicant may be represented by "[a]ny reputable individual of good moral character, provided that [h]e is appearing without direct or indirect remuneration and files a written declaration to that effect." (Emphasis added.) No such written declaration has been filed in this case by Mario Carretero. Accordingly, this decision will be sent only to the applicant.

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.

In his LIFE application (Form I-485) the applicant identified CSS as the basis of his eligibility for "LIFE legalization." Submitted along with the Form I-485 were photocopies of:

- (1) a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant and dated March 6, 1987,
- (2) an INS form letter, dated October 10, 1996, with the handwritten entry "Please find enclosed your packet CSS as the program is no longer available," and
- (3) a Legalization Questionnaire, signed by the applicant and dated October 17, 1999.

In the Legalization Questionnaire the applicant asserted that he went to an INS office in Chicago, Illinois, where he attempted to file an application for legalization (the above-referenced Form I-687) during the original filing period under the Immigration Reform and Control Act of 1986 ("IRCA"), but was rebuffed (*i.e.*, "front-desked") by the INS officer. The applicant asserted that he went back to a "local INS office" in 1995, and was told to mail his application (he did not indicate where). According to the applicant he did so, but ten months later the INS returned his documents with the note (the above-referenced form letter of October 10, 1996) that the "CSS . . . program is no longer available."

With respect to the Form I-687, some of the dates provided on the document raise fundamental questions about its authenticity. For example, the form was allegedly signed by the applicant and dated March 6, 1987. The filing period for applications under IRCA did not commence until two months later on May 5, 1987, however, and the form signed by the applicant was not even published until April 1, 1987. In addition, the applicant asserted on the form that he had “last come to the United States” on January 15, 1988, after departing the country to see his parents in Mexico on December 20, 1987. Since these dates are both after March 6, 1987, the applicant obviously did not complete and sign his I-687 form on the date he alleges.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant case the applicant has not explained the irreconcilable dates he provided in his I-687 form. Nor has he furnished any evidence, such as a postal receipt or an acknowledgement letter, that the form was filed with the INS any time prior to October 1, 2000. Accordingly, the Form I-687 does not constitute credible evidence of a timely written claim by the applicant for class membership in CSS, or either of the other legalization lawsuits.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. See *Matter of Ho*, *id.* at 591.

The photocopied INS form letter dated October 10, 1996 (with the handwritten entry “Please find enclosed your packet CSS as the program is no longer available”) does not identify the addressee. Thus, there is no way to verify that the letter had anything to do with the applicant. Citizenship and Immigration Services (successor to the INS) has no record of sending any correspondence to the applicant in 1996, or of receiving any correspondence from him until the instant LIFE application was filed in May 2002. That was long after the October 1, 2000 deadline to file a claim for class membership in CSS or one of the other legalization lawsuits. The AAO concludes, therefore, that the INS form letter does not constitute credible evidence of a timely filed claim by the applicant for class membership in CSS.

The applicant evidently regards the Legalization Questionnaire, dated October 17, 1999, as a timely claim for class membership in CSS. Citizenship and Immigration Services (CIS), successor to the INS, has no record of receiving the questionnaire from the applicant in October 1999. The applicant has submitted no evidence, such as a postal receipt or an acknowledgement letter, demonstrating that the questionnaire was completed and sent to the INS in October 1999, as alleged, or any time prior to October 1, 2000. In fact, INS (CIS) has no record of receiving the Legalization Questionnaire until May 2, 2002, when the instant LIFE application was filed. That was long after the statutory deadline of October 1, 2000 to file a claim for class membership in CSS or one of the other legalization lawsuits, *LULAC* or *Zambrano*.

Moreover, the Legalization Questionnaire was related to a separate program designed to identify applicants who attempted to apply for legalization during the original filing period from May 5, 1987 to May 4, 1988, but whose applications were rejected, or “front-desked.” Under that program the questionnaire was reviewed by the Vermont Service Center to determine whether the front-desking claim was valid. If it was found to be valid, the applicant was instructed to file a Form I-687, application for temporary resident status, with the Texas Service Center. The application would then be adjudicated as if it had been filed during the original filing period. Thus, submitting a Legalization Questionnaire to the Vermont Service Center was not the same thing as filing a claim for class membership in one of the legalization lawsuits, *CSS*, *LULAC*, or *Zambrano*, as required to be eligible for permanent resident status under the LIFE Act.

For all of the reasons discussed above, the record fails to establish that the applicant filed a written claim for class membership in CSS 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.