



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]

Office: Phoenix

Date: JUL 28 2004

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]

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 your case 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

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application for permanent resident status under 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 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, counsel requests that the applicant's LIFE Act application be adjudicated as an application for temporary residence under section 245A (legalization) of the Immigration and Nationality Act (INA), pursuant to 8 C.F.R. § 245a.6. Counsel contends that this course of action must be taken because the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) never adjudicated the applicant's original legalization application for temporary residence under section 245A of the INA.

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) (CSSS), *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.

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 neither claimed nor documented that he filed for class membership. Rather, the record reflects that the applicant timely filed his legalization application for temporary resident status under section 245A of the INA on May 4, 1988, and that the application was approved on April 10, 1989. The applicant subsequently filed the Form I-698, Application to Adjust Status from Temporary to Permanent Resident under Section 245A of the INA on February 16, 1994, and that this adjustment application is currently pending before CIS. Section 1104 of the LIFE Act contains no provision allowing for the consideration of this separate and distinct proceeding in this case, as the original application for temporary resident status under section 245A of the INA had been filed by the applicant in a timely manner.

The fact that an alien filed a timely Form I-687 legalization application does not establish eligibility to adjust to permanent residence under the LIFE Act. The legalization class-action lawsuits discussed above relate to aliens who claim they did not file applications in the 1987-1988 period because they were improperly dissuaded by the Service from doing so. The applicant would not have sought membership in the legalization class-action lawsuits as he had not been improperly dissuaded by the Service and did file a timely application on May 4, 1988.

Counsel's contention that the Service never adjudicated the applicant's original legalization application for temporary residence under section 245A of the INA is incorrect as has been noted above. Furthermore, counsel's assertion that 8 C.F.R. § 245a.6 allows the applicant's LIFE Act application to be treated as an application for temporary residence under section 245A of the INA is without merit. In order for the LIFE Act application to be considered as such, 8 C.F.R. § 245a.6 requires that: "...the eligible alien establishes that he or she was "front-desked" or that, though he or she took concrete steps to apply, the front-desking policy was a substantial cause of his or her failure to apply." Clearly, this regulation does not pertain to the applicant as he did submit a timely legalization application for temporary resident status under section 245A of the INA.

The record reflects all appropriate indices and files were checked and it was determined that the applicant had not applied for class membership. Given his failure to document that he timely filed a written claim for class membership, 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.