

Identifying data deleted
DATE: 1/11/05
BY: [illegible]

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Handwritten mark]

[Redacted]

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: 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.

[Handwritten signature]

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 was reopened and denied again by the Director, National Benefits Center. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The directors 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 and, therefore, denied the application.

On appeal, the applicant asserts that he filed a timely claim for class membership in the form of a Legalization Questionnaire which was dated May 20, 2000, and mailed to the Immigration and Naturalization Service (INS) in Washington, D.C.

A Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been furnished by Mario E. Carretero, who indicates he has been an immigration consultant for thirty years. 8 C.F.R. § 292.1(a)(3)(ii) specifies that an applicant may be represented by a reputable individual who is appearing without direct or indirect remuneration and files a written declaration to that effect. As no such declaration has been filed by Mr. Carretero, this decision will be sent to the applicant only.

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." The Legalization Questionnaire to which the applicant refers on appeal is a photocopy that was submitted to the Missouri Service Center in December 2001 in response to the initial Notice of Intent to Deny his LIFE application. In that document, which is signed by the applicant and dated May 20, 2000, the applicant asserted that he went to an INS office in Chicago, Illinois, during the original filing period for legalization applications (May 5, 1987 to May 4, 1988) under the Immigration Reform and Control Act of 1986 ("IRCA"), but was rebuffed (*i.e.*, "front-desked") by the INS officer who told him that he was "disqualified" because of a visit to Mexico in October 1987. The applicant further stated that "in October 1993 I [went] again to [the] INS local office" and was told by the INS officer "that CSS was cancelled."

The applicant contends that the Legalization Questionnaire, dated May 20, 2000, constitutes a claim for class membership in CSS prior to October 1, 2000, as required under section 1104(b) of the LIFE Act. However, Citizenship and Immigration Services (successor to the INS) has no record that the applicant actually submitted the questionnaire before the October 1, 2000 filing deadline. The applicant has submitted no evidence, such as a postal receipt or an acknowledgement letter from the agency, demonstrating that the questionnaire was completed and sent to the INS in May 2000, as alleged, or any time prior to October 1, 2000. The agency has no record of receiving the questionnaire until December 13, 2001, in response to the initial Notice of Intent to Deny the instant LIFE application. That was more than a year after the deadline for filing a claim for class membership in one of the legalization lawsuits. Thus, the applicant has failed to demonstrate that the questionnaire was a timely filed claim for class membership in CSS.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I & N Dec. 582 (BIA 1988).

Other materials filed by the applicant with his LIFE application (Form I-485) in September 2001 included photocopies of (1) an undated affidavit by the applicant asserting that he initially attempted to file a legalization application at a Chicago INS office on November 23, 1987, but the INS officer returned his documents after telling the applicant that he did not qualify, (2) an undated notice to the applicant from an INS office in London, Kentucky, stating that "[y]our registration number is [REDACTED]" (3) an undated notice from the same INS office in London, Kentucky, with no addressee identified, stating that "[y]our registration number is [REDACTED]" and (4) a letter from the applicant to the Nebraska Service Center, dated March 26, 1998, in which the applicant identifies his registration number as [REDACTED] and states that "I am writing this letter to inquire about my application for permanent residence that I filled out in the latter part of 1989." Later, in response to the second Notice of Intent to Deny his LIFE application, the applicant submitted a photocopy of an INS Receipt Notice, dated September 13, 2001, confirming that the applicant's I-485 application had been received and identifying his A-number as [REDACTED]

None of the foregoing documents establishes that the applicant filed a claim for class membership in CSS, or either of the other legalization lawsuits, before October 1, 2000. There is no evidence that the undated affidavit, which restates the information provided in the previously discussed Legalization Questionnaire, was prepared or submitted to the INS before September 2001. As for the INS notice from Kentucky purportedly advising the applicant that his registration number was [REDACTED] its authenticity is doubtful because the INS has no record of ever issuing this A-number to the applicant. The notice would not be evidence of a timely claim for class membership in any event because it is undated and does not indicate the type of application (or other matter) to which the registration number applies. With respect to the second INS notice from Kentucky identifying a registration number of [REDACTED] it likewise fails to constitute evidence of a timely claim for class membership because the document is undated, the applicant's name does not appear thereon, and there is no indication that it applies to a claim for class membership. Moreover, the INS has no record of issuing that A-number to the applicant. The applicant's letter to the Nebraska Service Center in 1998, identifying his registration number as [REDACTED] is equally suspect. The INS has no record of receiving the subject letter from the applicant and, as indicated above, no record of issuing that A-number to the applicant. Furthermore, the applicant does not indicate in the letter that he had filed, or intended to file, a claim for class membership in CSS or one of the other legalization lawsuits. Rather, he refers to an application for permanent residence he allegedly filed in 1989, of which there is no record at INS (now Citizenship and Immigration Services). Moreover, this information conflicts with that provided by the applicant in his Legalization Questionnaire and his affidavit, in which he stated that he did not file any application with the INS because he was "front-desked" in 1987, and again in 1993, when he attempted to do so. In short, the applicant's 1998 letter to the Nebraska Service Center does not constitute a timely claim, or evidence of a timely claim, for class membership in CSS.

Lastly, although the Receipt Notice sent by the INS to the applicant after his LIFE application (Form I-485) was filed in September 2001 does identify the applicant as "[REDACTED]" that A-number was used simply because the applicant had provided that number in his I-485 application, which the INS had received the day before. As soon as the INS determined that the applicant had never been issued that A-number, the applicant was issued the number [REDACTED]. All subsequent correspondence from the INS, beginning with the initial Notice of Intent to Deny from the Missouri Service Center on October 18, 2001, has used this new and correct A-number.

For all of the reasons discussed above, the record fails to establish that the applicant filed a written claim for class membership in *CSS*, or either of the other two legalization lawsuits, *LULAC* or *Zambrano*, before October 1, 2000, as required by 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.