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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE:



Office: National Benefits Center

Date:

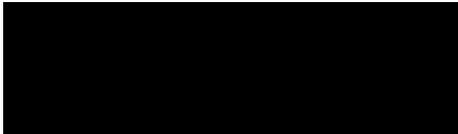
MAR 16 2004

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 was ineligible to adjust status under section 245A of the Immigration and Nationality Act (INA) because he had been convicted of three misdemeanors in Palm Beach County, Florida, in 1990 and 1991. The director cited two regulatory provisions, 8 C.F.R. § 245a.3(b)(3) and 245a.3(c)(1), specifying that aliens who have been convicted of one felony or three or more misdemeanors in the United States are ineligible to adjust from temporary to permanent resident status.

On appeal, counsel submitted a short statement asserting that the applicant may only have been convicted of two misdemeanors, rather than three, which would make him eligible for adjustment of status under the LIFE Act. Counsel requested a 60-day extension to proffer evidence that the applicant only had two convictions. One year after the appeal was filed, however, no such evidence has been submitted.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she has not been convicted of a felony or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1). In his decision denying the application, the director should have cited these statutory and regulatory provisions. Instead, he cited identical regulatory provisions of the Immigration Reform and Control Act of 1986 (IRCA), which allowed certain unlawful residents of the United States to apply for legalization in the late 1980s. However, since both IRCA and the LIFE Act, together with their implementing regulations, make aliens convicted of one felony or three or more misdemeanors in the United States ineligible for permanent resident status, the director's incorrect citation of the original legalization regulations, rather than the later LIFE Legalization regulations, was a harmless error.

The record indicates that the applicant was convicted of the following misdemeanors in Florida:

- | | | |
|----|--|-------------------------|
| 1. | DUI: July 8, 1990 (arrested) – Nov. 16, 1990 (convicted) | Palm Beach County Court |
| 2. | DUI: Feb. 23, 1991 (arrested) – May 2, 1991 (convicted) | Palm Beach County Court |
| 3. | DUI: Apr. 25, 1991 (arrested) – May 2, 1991 (convicted) | Palm Beach County Court |

Counsel has not followed up on his suggestion in the statement of appeal that the applicant may only have committed two misdemeanors rather than three. Accordingly, there is no basis to overturn the director's decision, which is supported by the record. That makes the applicant ineligible, under section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.11(d)(1), for adjustment to permanent resident status.

An applicant under section 1104 of the LIFE Act must also 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 did not indicate in his LIFE application, or submit any documentary evidence, that he filed a written claim for class membership before October 1, 2000 in one of the legalization lawsuits, CSS,

LULAC, or *Zambrano*, as required to be eligible for legalization under section 1104(b) of the LIFE Act. Nor has the applicant submitted any evidence on this point in his appeal. Thus, the record does not establish that the applicant filed the requisite written claim for class membership in one of the three legalization lawsuits.

The applicant did file a timely application for temporary resident status as a special agricultural worker (SAW) under section 210 of the Immigration and Nationality Act (INA) on June 28, 1988. That application was denied on September 16, 1993. An application for SAW status 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 previously denied application for temporary resident status as a special agricultural worker under section 210 of the INA.

For the reasons discussed above, 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.