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



**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE:

[Redacted]

Office: NATIONAL BENEFITS CENTER

Date: **MAR 22 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 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, 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 she 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's attorney submits a separate statement, in which he asserts that, on May 3, 1988, the applicant attempted to submit an application under the Immigration Reform and Control Act of 1986 (IRCA) at the Citizenship and Immigration Services' Manhattan Legalization Office, but was "front-desked" or otherwise discouraged from applying. While acknowledging that the applicant did not file an application for class membership and is, therefore, ineligible for permanent resident status under the LIFE Act, counsel maintains that, according to 8 C.F.R. 245a.6, the applicant is, nevertheless, eligible for temporary resident status under section 245A of the Act.

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) (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 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.

On appeal, the applicant's attorney acknowledges that the applicant did not file an application for class membership and is, therefore, ineligible for permanent resident status under the LIFE Act. Nevertheless, counsel maintains that according to 8 C.F.R. § 245a.6, the applicant is eligible for temporary resident status under section 245A of the Act. The regulation at 8 C.F.R. § 245a.6 states in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A)

A careful reading of this language indicates that its applicability is limited to "an eligible alien as defined at 8 C.F.R. § 245a.10." An *eligible alien* as defined in 8 C.F.R. § 245a.10 is limited to one who, prior to October 1, 2000, has filed a written claim with the Attorney General for class membership in one of the aforementioned legalization class-action lawsuits. In the present case, however, counsel has already acknowledged that the applicant has *not* filed an application for class membership. As such, contrary to counsel's assertion on appeal, 8 C.F.R. § 245a.6 has no applicability to this applicant.

On appeal, counsel also asserts that, on May 3, 1988, the applicant attempted to submit an application under the Immigration Reform and Control Act of 1986 (IRCA) at the Citizenship and Immigration Services (CIS) Manhattan Legalization Office, but was "front-desked" or otherwise discouraged from applying. Counsel has also provided the following documentation:

- a photocopied notice dated May 3, 1988 from the District Legalization Officer of the CIS Manhattan Legalization Office acknowledging that the applicant had filed an application pursuant to section 245A/section 210 of the Immigration and Nationality Act (INA); and
- a photocopied notice dated April 29, 1988 from the District Legalization Officer of the CIS Manhattan Legalization Office acknowledging that the applicant had filed an application pursuant to section 245A/section 210 of the Immigration and Nationality Act (INA).

These photocopied notices allegedly issued to the applicant by CIS's Manhattan Legalization Office acknowledge that the applicant filed a timely application under section 245A or section 210 of the INA. This directly contradicts counsel's claim on appeal that the applicant had been front-desked or otherwise prevented or discouraged from applying under IRCA. Moreover, if the applicant had in fact filed timely special agricultural worker or legalization applications under IRCA in May 1988, a file would have been created at that point. However, there is no indication in CIS administrative or computer records of the applicant ever having filed such applications. In addition, counsel asserts on appeal that the applicant first attempted to submit an application under IRCA on *May 3, 1988*. Presumably, the photocopied notice dated May 3, 1988 is associated with this transaction (or attempted transaction). Yet, the applicant has also submitted into the record the aforementioned identical notice from the Manhattan Legalization Office dated *April 29, 1988*. There is no explanation from counsel or the applicant regarding what transaction or occurrence this earlier notice relates to or why it was even issued.

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).

It is concluded that the applicant did not file a timely application for legalization in early May 1988. There is no pending legalization application. Also, given the applicant's failure to claim or submit credible documentation establishing her having filed a timely application for class membership, she is ineligible for permanent residence under section 1104 of the LIFE Act and under 8 C.F.R. § 245a.6 as stated above.

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