

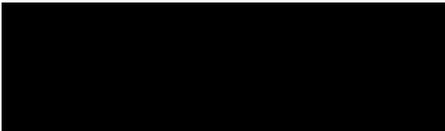
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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



FILE:



Office: National Benefits Center

Date:

MAR 24 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 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 "presented sufficient evidence that I attempted to file for LIFE legalization benefits," and therefore "did state a claim."

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.

The record shows that the applicant filed an application on November 17, 1988 for temporary resident status as a special agricultural worker (SAW) under section 210 of the Immigration and Nationality Act (INA). The SAW application was denied by the District Director in Omaha, Nebraska, on February 2, 1989. The applicant filed an appeal, which was dismissed by the Legalization Appeals Unit (the AAO's predecessor office) on January 21, 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 an application for temporary resident status as a special agricultural worker under section 210 of the INA.

In his LIFE application the applicant identified CSS as the basis of his eligibility for "LIFE legalization," but submitted no supporting documentation. In response to the director's notice of intent to deny, the applicant submitted a photocopy of a "Legalization Questionnaire," bearing his signature and dated January 27, 2000, in which he asserted that he attempted to file an application for legalization under section 245A of the INA several times during 1987 and 1988, but that the INS refused to accept it. According to the applicant, "the INS finally accept my application" and "let me file on Nov. 7, 1988." This date was six months after the May 4, 1988 deadline to file applications under section 245A of the INA, but shortly before the November 30, 1988 deadline for filing SAW applications under section 210 of the INA. It is clear that the application the INS "let me file on Nov. 7, 1988" is the SAW application discussed above (actually filed on November 17, 1988). From the cryptic answers the applicant provided in the Legalization Questionnaire, however, it is unclear whether the earlier unsuccessful attempts to file an application (in January 1987, June 1987, and January 1988, he asserts) refer to attempted filings under section 245A, as alleged, or under section 210 of the INA. Under the LIFE Act only a section 245A application whose filing was rejected by INS can give rise to a valid claim for class membership in one of the subsequent legalization lawsuits, *CSS*, *LULAC*, or *Zambrano*.

Despite this uncertainty, the applicant referred to the Legalization Questionnaire in an accompanying letter he sent at to INS (now Citizenship and Immigration Services) on September 29, 2002, as "the only proof I have of a timely filing for *CSS vs. Reno*." In his letter the applicant stated that he "filed my *CSS vs. Reno* claim

through the Catholic Church on Jan. 27, 2000," which was before the statutory deadline of October 1, 2000. According to the applicant, INS returned the questionnaire to him by certified mail on May 4, 2000. As evidence thereof he submitted a photocopied certified mail envelope from the INS district office in Omaha, Nebraska, addressed to him and stamped "1st Notice May 2, 2000, 2nd Notice May 4, 2000." The applicant states that he retrieved the questionnaire from his post office box on May 5, 2000, and found a hand-written blue note advising that the claim had to be filed at his local INS office. The applicant asserts that he took the questionnaire to the INS office in Wichita, Kansas, around May 30, 2000, but INS told him the "program was over" and would not take the application.

The applicant presents no further evidence on appeal, but contends that his attempts to submit the Legalization Questionnaire to INS on January 27, 2000, and later on May 30, 2000, constitute a written claim for class membership in CSS before the statutory deadline of October 1, 2000.

The applicant's evidence of a timely filed claim for class membership is less than persuasive. The photocopied Legalization Questionnaire bears no evidence, such as the signature and date of a notary public, of having actually been prepared on January 27, 2000. Nor is there any documentary evidence, such as a postal receipt, that it was actually sent to INS on that date. If the questionnaire was indeed returned to the applicant by certified mail in May 2000, as alleged, the applicant should have the original envelope in which it was returned. Instead, he has submitted, without explanation, a photocopy of the envelope. Moreover, the Legalization Questionnaire and the certified mail envelope, along with the applicant's letter explaining the alleged course of events from January to May 2000, were not submitted to INS until after the applicant had received the director's notice of intent to deny. The applicant has not explained why, if he had the questionnaire and the envelope all along, he did not submit them with his LIFE application. Applicants were instructed to provide qualifying evidence with their applications, and the applicant in this case did include other documentation with his application.

It is concluded that the documentation submitted by the applicant in this proceeding fails to establish that he filed a written claim for class membership in CSS prior to 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.