



U.S. Citizenship
and Immigration
Services

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MAY 11 2004

FILE:  Office: NATIONAL BENEFITS CENTER Date:

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: 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 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

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 sustained.

The director denied the application as he concluded that the applicant was inadmissible under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (INA), because he had been convicted of alien smuggling by the United States Border Patrol on March 18, 1983.

An applicant for permanent resident status under the provisions of LIFE Act must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT.

While the director was correct in stating that the applicant had been apprehended and charged with a variety of offenses including alien smuggling by the United States Border Patrol on March 18, 1983, the United States Border Patrol possesses neither the power nor authority to convict any individual of any offense. Furthermore, the only definitive evidence contained in the record relating to this apprehension and disposition of such charges shows that applicant was subsequently convicted of a violation of 8 U.S.C. 1325, Illegal Entry into the United States, when he pleaded guilty to this offense before the United Magistrate in San Diego, California on March 21, 1983. While the applicant may very well be inadmissible as a result of his conviction for illegal entry into this country pursuant to section 212(a)(6)(A)(i), the record shows that he served a fifteen day sentence and then voluntarily departed to Mexico upon his release on April 1, 1983. The record contains no evidence to indicate that there has ever been a formal finding that the applicant is inadmissible as a result of his conviction for illegal entry.

Although not noted by the director, the record shows that the applicant was subsequently arrested by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on June 24, 1985, when he attempted to enter the United States using a counterfeit immigration document. While the applicant is inadmissible because he misrepresented a material fact by presenting a fraudulent document pursuant to section 212 (a)(6)(C) of the INA, the Service subsequently granted a waiver application on March 11, 1992, that had been submitted on his behalf in order to overcome the ground of inadmissibility arising from this prior misrepresentation.

The applicant is admissible to the United States as an immigrant as required by both section 245A(d)(2) of the INA and section 1140(c)(2)(D)(i) of the LIFE ACT. It is concluded that the applicant has overcome the sole ground of ineligibility cited by the director. A review of the record shows that the alien is a class member in *Catholic Social Services, Inc. v. Meese* lawsuit, thereby establishing his eligibility for permanent residence under the LIFE Act pursuant to 8 C.F.R. § 245a.10. Therefore, the previous denial of the LIFE Act application shall be withdrawn and the appeal sustained.

It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1140 of the LIFE Act. Accordingly, the matter will be forwarded to the appropriate district office for further processing and adjudication of the LIFE Act application.

ORDER: The appeal is sustained. The director shall forward this matter to the proper district office for the completion of adjudication of the application for permanent residence.