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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

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MAY 11 2004

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:

[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.

[Handwritten signature of Robert P. Wiemann]

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 concluded the applicant had not established that he 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, counsel for the applicant submits a separate statement in which he asserts that the applicant has established eligibility as a class member under CSS/LULAC.

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 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)(CSS), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano).

Pertinent regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for membership before October 1, 2000. The regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14. Furthermore, those regulations require Citizenship and Immigration Services (CIS) to determine whether an alien filed a written claim for class membership as reflected in CIS indices and administrative files.

The record indicates the applicant had filed a timely application for temporary resident status as a special agricultural worker (SAW) under section 210 of the INA. That application was subsequently denied. The applicant appealed the denial of his application, and the appeal was dismissed by the AAO. In any case, an application for SAW status does not constitute an application for class membership in any of the legalization class-action lawsuits. Furthermore, section 1104 of the LIFE Act contains no provision allowing for the reopening and reconsideration of a timely filed and previously denied application for temporary resident status as a special agricultural worker under section 210 of the INA.

Along with his LIFE application, the applicant provided a photocopy of a completed Form for Determination of Class Membership in *CSS v. Meese*, which is signed by the applicant and dated June 20, 1995. The form has been completed and signed in ink. In his statement on appeal, counsel acknowledges that this document is a resubmittal or, more accurately, a reconstruction of a previously-submitted determination form, which the applicant had previously filed with the Immigration and Naturalization Service or INS or the Service (now, Citizenship and Immigration Services or CIS). Counsel further asserts that the applicant never received an acknowledgement of such filing from INS and, as he is no longer able to provide a copy of that form, is obliged to provide this reconstruction of that original document.

Counsel's assertion on appeal is supported by the inclusion in the record of a December 12, 1995 communication from the INS office in Irving, Texas to the applicant. The communication informed the

applicant that his request for a copy of documentation pertinent to pending legalization proceedings was being forwarded to the FOIA (Freedom of Information Act) officer at INS's Western Service Center in Laguna Niguel, California, for implementation. An examination of the record indicates that the applicant's request was subsequently complied with. This FOIA-related information, which had previously been included in a separate Service file assigned to the applicant [REDACTED] has since been incorporated into the applicant's current file [REDACTED]. Included in this information was the original photocopy of the class membership determination form which the applicant's attorney had subsequently attempted to reconstruct in the absence of access to this document. Unlike the reconstructed determination form provided by counsel, this actual photocopy of the originally-submitted form does not include a date. However, as this document was part of the FOIA material referenced in the INS communication December 12, 1995, it can be assumed that it predated the October 1, 2000 deadline for filing class membership claims.

In his decisional notice, the director indicated there was no record of the existence of this document in official CIS records. It is possible the director thereupon concluded the form was not genuine. However, in this case, it does not follow from counsel's inability to provide the originally-submitted determination form that the applicant had not at some *previous* occasion submitted the form to INS. Moreover, if the center director entertained doubts regarding the authenticity of the reconstituted determination form submitted by counsel, he could have opted to require either the original of the document or an explanation as to why this was not possible.

Pursuant to 8 C.F.R. § 245a.14(b), an applicant may submit, as evidence of having filed for class membership, a questionnaire for class member applicant under CSS, LULAC, or Zambrano. In providing a photocopy of the aforementioned Form for Determination of Class Membership in *CSS v. Meese*, the applicant has provided appropriate evidence of having filed a timely claim for class membership in the CSS legalization class-action lawsuit, as set forth in 8 C.F.R. § 245a.14(b).

The photocopied determination form serves to corroborate counsel's claim on appeal that the applicant did in fact file a timely claim for class membership in CSS. The director, in his denial notice, has not established that the information contained in this document is either false or inconsistent with the applicant's claims throughout the application process. It is, therefore, concluded that the applicant has established eligibility for class membership.

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 decision is reversed; the appeal is sustained.