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U.S. Citizenship
and Immigration
Services

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MAY 13 2004

[Redacted]

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:

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 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 a felony – burglary/grand larceny – in Broward County, Florida. 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, the applicant states that he has been residing in the United States since he was eleven years old (more than twenty years) and requests that this office not make him “pay for a costly mistake of being around the wrong crowd eleven years ago.”

An applicant 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 applicant’s file includes original documentation which establishes that he filed a timely claim for class membership in *LULAC*. The documents of record include (1) an affidavit for determination of class membership in *LULAC*, signed by the applicant and dated May 14, 1990, (2) an appointment notice (Form G-56) from the INS office in Hialeah, Florida, dated August 20, 1990, scheduling an appointment for the applicant on October 1, 2000, concerning his “application for class membership under *LULAC*,” and (3) a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), signed by the applicant and stamped as received by the Hialeah office on October 1, 2000.

However, an applicant for permanent resident status under section 1104 of the LIFE Act must also 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 arrested in Broward County, Florida, on January 1, 1992, and charged with two felony counts of burglary and grand larceny. Court records show that the applicant entered a plea of guilty to both counts on February 6, 1992, and was placed on probation for a period of 18 months. That conviction 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.

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.