

IDENTIFYING DATA RELATED TO
PROSECUTING UNLAWFUL
INVASION OF PERSONAL PRIVACY

identifying data related to
prosecuting unlawful
invasion of personal privacy



U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:



Office: NATIONAL BENEFITS CENTER

Date: May 18, 2004

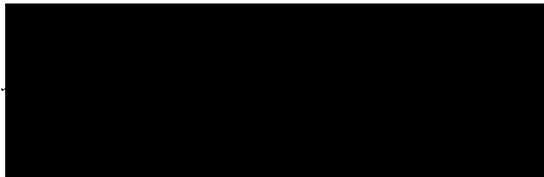
IN RE:

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 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 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 reiterates the claim that the applicant previously filed for class membership. Counsel includes photocopies of previously submitted documentation in support of the appeal.

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.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. See 8 C.F.R. § 245a.12(e). An alien applying for adjustment of status under section 1104 of the LIFE Act has the burden of proving his or her eligibility by a preponderance of the evidence.

With his LIFE Act application, the applicant submitted documentation indicating that he submitted a legalization application for temporary residence under section 245A of the Immigration and Nationality Act (INA) to the Immigration and Naturalization Service, or the Service, (now Citizenship and Immigration Services, or CIS) in December 1995. Specifically, the applicant submitted photocopies of the following documents:

- the first page of the four page Form I-687 legalization application containing the applicant's biographical information;
- a "Form for Determination of Class Membership in CSS v. Meese" that is signed by the applicant and dated December 1, 1995, and;
- an United States Postal Service (USPS) customer receipt for certified mail that contains a December 2, 1995 postal cancellation stamp, a hand written notation bearing the address of the Service's Houston, Texas District Office, and identification number, [REDACTED]

In response to the notice of intent to deny the applicant submitted a statement rebutting the director's determination that the record did not contain evidence to demonstrate that he filed a written claim to class membership. The applicant declared that he applied for "CSS/LULAC" class membership in 1995. The applicant included the same photocopied documents discussed above with his response.

While the director did note that the applicant submitted two of the three documents listed above in the subsequent denial notice, no mention was made of the USPS customer receipt for certified mail or the rebuttal statement made in response to the notice of intent. If the director had questions regarding the credibility of any supporting documents provided by the applicant, he could have requested that originals of photocopied

documents be submitted. The director did not establish that the information in the supporting documents was inconsistent with the claims made either on the application or in the rebuttal statement, or that such information was false. The applicant's own testimony taken in context with supporting evidence in certain cases can logically meet the preponderance of evidence standard. As stated in *Matter of E--M--*, 20 I. & N. Dec. 77 (Comm. 1989), when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. Clearly, the supporting documents and the applicant's rebuttal statement are relevant documents under 8 C.F.R. § 245a.14. As such, the applicant's claim to class membership must be considered in light of such testimony and evidence.

The independent and contemporaneous evidence contained in the record supports the applicant's assertion that he put forth a claim to class membership by submitting the documents discussed above to the Service's district office in Houston, Texas in December 1995. Therefore, it must be concluded that the applicant has demonstrated that he filed a written claim to class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

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.