

REAR COPY

Security Information Division
Department of Homeland Security
Bureau of Personal and Family Services

10

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



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: NATIONAL BENEFITS CENTER Date: MAY 18 2004

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 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 initially denied by the Director, Missouri Service Center. The matter was subsequently reopened and denied again by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The directors both 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 from the initial denial, counsel reiterates the claim that the applicant previously filed for class membership.

The record shows that subsequent to the reopening of the case, both the applicant and counsel were afforded the opportunity to submit additional material in support of the appeal. However, neither the applicant nor counsel has submitted a statement, brief, or documentation to supplement the appeal. Therefore, the record shall be considered complete.

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 a statement in which he asserted that he applied for CSS class membership with the Immigration and Naturalization Service, or the Service, (now Citizenship and Immigration Services, or CIS) prior to October 1, 1998, but that he never received a response. In support of this contention, the applicant submitted the following documents with his LIFE Act application:

- a photocopy of a Form G-639, Freedom of Information/Privacy Act Request for a copy of all records relating to the applicant that was submitted to the Service by counsel and is dated September 12, 1998, and bears the typewritten notation "CSS VS RENO CLAIM;"
- an original Form G-28, Notice of Entry of Appearance as Attorney or Representative, that was submitted on the applicant's behalf by counsel and is dated February 20, 1999, and bears the hand written notation "CSS VS RENO CLAIM;"
- an original Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Office of the Immigration Judge Executive Office of Immigration Review, that was submitted on the applicant's behalf by counsel and is dated February 20, 1999, and bears the typewritten notation "CSS VS RENO CLAIM;"

- a photocopy of an United States Postal Service domestic return receipt for certified mail that contains the hand written address of the Service's Texas Service Center, a receipt stamp from the Texas Service Center dated September 7, 1999, and an article identification number, [REDACTED] on one side, as well as counsel's address and the hand written notation "CSS v RENO" on the opposite side, and ;
- a photocopy of an United States Postal Service domestic return receipt for certified mail that contains the hand written address of the Texas Service Center, a receipt stamp from the Texas Service Center dated August 15, 2000, and an article identification number, [REDACTED] on one side, as well as the hand written address of counsel and the notation "CSS claim" on the opposite side,

In denying the application, both directors concluded that the documentation submitted by the applicant failed to demonstrate that he had made a written claim to class membership prior to October 1, 2000. However, neither director established that the information in the supporting documents was inconsistent with the claims made on the application or that such information was false. If the directors had questions regarding the credibility of any of the photocopied supporting documents provided by the applicant, they could have requested that originals of the photocopied documents be submitted. 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 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 timely claim to class membership. The evidence clearly establishes that counsel made direct inquiries and representations to the Service regarding the applicant and his claim to membership in the CSS class-action lawsuit in September 1998, February 1999, September 1999, and August 2000. 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.