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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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:



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 (LIFE) Act was denied by the 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 therefore, denied the application.

On appeal, the applicant asserts that, along with evidence of having previously filed a timely application for temporary resident status as a special agricultural worker section 210 of the Immigration and Nationality Act (INA), he has also provided documentation establishing his having filed a timely claim for class membership under the CSS class action legalization lawsuit.

An applicant for permanent resident status under section must establish that before he or she filed a written claim with the following legalization class-action lawsuits

vacated sub nom. , 509 U.S. 43 (1993)(CSS),
vacated sub nom.

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 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 and the application was denied The applicant's appeal to the denial of his application was dismissed by the AAG 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

Along with his LIFE application, the applicant provided a photocopy of a Notice of Review Decision dated of the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS), acknowledging that the applicant had submitted a legalization-related questionnaire According to the center director's notice, the applicant's questionnaire was accompanied by other evidence in support of the applicant's claim to have attempted to file a legalization application under section 245A but was discouraged by a Service officer from pursuing his application. The photocopied review notice also references the applicant's Alien Registration Number or A-number.

A subsequent photocopy of the [REDACTED] of Review Decision was later submitted into the record by the applicant in response to the Notice of Intent to Deny. Yet, nowhere in the director's [REDACTED] of Decision is there any mention of the applicant having provided this document. It is not clear why the director failed to reference the photocopied notice submitted by the applicant. It is possible the director concluded the notice was not genuine, as there was no file copy in the applicant's administrative file of the questionnaire to which the notice referred. However, the absence of a copy of the questionnaire in the applicant's file does not necessarily mean that such document could not have been submitted by the applicant. Moreover, if the center director entertained doubts regarding the authenticity of the photocopied notice provided by the applicant, he could have opted to require that the applicant supply the original of the document.

Pursuant to 8 C.F.R. § 245a.14(b), an applicant may submit, as evidence of having filed for class membership, a CIS document which is addressed to him and which also includes his A-number. In providing a photocopy of the aforementioned [REDACTED] review notice from the [REDACTED] 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 notice submitted by the applicant along with his application serves to corroborate his claim on appeal that he attempted without success to apply for class membership in CSS. The director, in his denial, did not establish that the information contained in the notice was either false or inconsistent with the applicant's claims on the application or on rebuttal. 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.