



U.S. Citizenship
and Immigration
Services

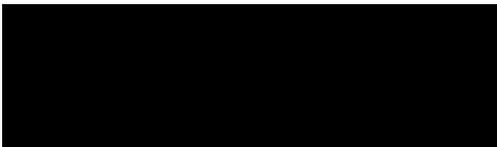


FILE: [REDACTED] Office: National Benefits Center Date: **OCT 25 2004**

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. All documents have been returned to the office that originally decided your case. 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

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prevent unauthorized
disclosure of information

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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 on appeal. The appeal will be dismissed.

The director determined 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. He also noted that the applicant was inadmissible to the United States because he was present in this country without having been admitted or paroled. The director found the applicant to be inadmissible as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is admissible pursuant to section 212(a)(6)C(i) of the Immigration and Nationality Act (INA).

On appeal, the applicant states that he believes he presented sufficient evidence to show that he made a claim and that his claim was not given adequate consideration. The applicant further states that the evidence that he was arrested in Houston, Texas on January 22, 1999 is not accurate.

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.

Along with his LIFE application, the applicant provided an "Affidavit of Claim to CSS Eligibility" signed by a notary public on May 22, 2002 in which he attests:

During the period of 5/87-5/88, I attempted to file a claim to the amnesty law, but the officer said that since I was from Guatemala I should file for asylum. I could find no one to complete the asylum claim. The designated entity in Indian Town, FL filled out the amnesty application and I obtained fingerprints and medical. Again when I went to file the application, I was front-desked. I made 3 attempts to file at the I.N.S. of Indian Town, FL and on all 3 occasions, I was front-desked and the officer refused to take my Legalization application insisting that I should file for asylum since I was from Guatemala. The I.N.S. officer displayed discriminatory treatment against me because I am Guatemalan. The Mexican born applicants did not suffer this discrimination and were not told to file for asylum.

The applicant is referring to attempts to file an actual *legalization application* during the twelve-month period of May 1987 to May 1988. However, the issue before us is whether the applicant requested *class membership in a legalization lawsuit*.

On rebuttal to a notice of intent to deny, the applicant provided a photocopy "Legalization Questionnaire," bearing his signature and dated May 18, 1999. In the Legalization Questionnaire, the applicant asserted that he did not file an application for legalization under section 245A of the INA between May 5, 1987 and May 4, 1988 because: "the INS would not let me file because they claimed that amnesty had closed." The applicant also stated: "the INS officer in Phoenix AZ refused to file my paperwork after giving me the runaround since 1996. My last attempt was in Aug. 1987." The applicant provided a photocopy of a Form I-687 Application for Status as a Temporary Resident under section 245A of the INA allegedly signed by him on August 1, 1987.

The applicant does not explain *why*, if the Legalization Questionnaire and the Application for Status as a Temporary Resident application were in his possession the entire time, he did not submit them with his LIFE application, as applicants were advised to provide evidence *with* their applications.

To be eligible for permanent resident status under section 1104(b) of the LIFE Act the applicant must show that after failing to file for temporary residence (legalization) during the May 5, 1987 and May 4, 1988 period, he filed a claim for class membership in one of the legalization lawsuits sometime before October 1, 2000. The applicant has not furnished any evidence, such as a postal receipt or an acknowledgement letter from the INS, that the above forms were filed with the INS on a date before October 1, 2000. CIS has no record of receiving any of these documents from the applicant until the instant LIFE application was filed on May 31, 2002. That was long after the statutory deadline to file a claim for class membership one of the legalization lawsuits.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has furnished no further evidence on appeal that either of the two documents discussed above were filed with the INS before October 1, 2000. Thus, neither of them can be considered evidence of a timely, and therefore legally valid, claim for class membership. Accordingly, the applicant is ineligible for permanent resident status under section 1104(b) of the LIFE Act.

The director, in his decision, noted that the applicant was inadmissible under section 212(a)(6)(A)(i) of the INA as an alien who had entered the United States without admission or parole. The record of proceedings contains a finding of inadmissibility against the applicant on this charge. Although inferred by the director in his order, the record contains no finding that the alien committed willful misrepresentation under the provisions of section 212(a)(6)(C)(i) of the INA. Under the provisions of the LIFE Act, the inadmissibility of an alien entering the U.S. without inspection is *not* an issue. Additionally, even had there been a formal finding of willful misrepresentation, the applicant would have been eligible for a waiver of that ground of inadmissibility.

Section 1104(c)(2)(B)(i) of the LIFE Act provides that each applicant for permanent resident status must establish he or she entered and commenced residing in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. On March 11, 1999, the applicant appeared at a hearing before an Immigration Judge in removal proceedings in El Paso, Texas. At his hearing, he stated under oath that he was residing at his father's home in Guatemala in 1983 and that he did not leave that country until 1994. He further stated that he entered the United States on December 15, 1994. Given the applicant's inability to meet the statutory requirement of continuously residing in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, he is ineligible for permanent residence under section 1104(c) of the LIFE Act for this additional reason.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.