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



**U.S. Citizenship
and Immigration
Services**

L2

[Redacted]

FILE:

[Redacted]

Office: NATIONAL BENEFITS CENTER

Date: **SEP 02 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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, National Benefits Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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. The director also concluded that the applicant was inadmissible under section 212(a) of the Immigration and Naturalization Act (the Act) due to criminal history in the United States. Accordingly, the director denied the application.

On appeal, counsel asserts that the applicant qualified for the benefit being sought even though his evidence for class membership is scant. Counsel further argues that the applicant is not inadmissible to the United States under any of the provisions of section 212(a) of the Act. In a supplemental brief, counsel put forth several arguments disputing the director's decision.

Counsel, on appeal, argues that Citizenship and Immigration Services (CIS) failed to provide counsel with the documentation from the applicant's other A-file (A95 135 688) pursuant to his Freedom of Information Act request. Upon a thorough review of the record, it is noted that the A-number in question was initiated for the applicant's Form I-485 Application. Once it was apparent that the applicant had a prior A-file (A92 344 805), all the documentation from the Form I-485 was consolidated into the prior A-file. As such, counsel has been provided with the applicant's entire record of proceeding.

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.

On appeal, counsel asserts that the applicant is in the process of searching for evidence of his class membership to CSS LULAC and *Zambrano*, but is unable to locate any of the individuals he hired to prepare and represent him in the his amnesty applications.

The record reveals that the applicant timely filed a legalization application for temporary resident status under section 245A of the Act on November 23, 1987. The applicant was interviewed on December 11, 1987 and said application was subsequently approved. The applicant's temporary resident status was terminated on May 12, 1992. The applicant's Form I-698 Application to Adjust from Temporary to Permanent Resident was denied on June 26, 1992. Section 1104 of the LIFE Act contains no provision allowing for the reopening and reconsideration of the matter, as the original application for temporary resident status under section 245A of the Act had been filed by the applicant in a timely manner. The legalization class-action lawsuits mentioned above relate to aliens who claim they did not file applications in the 1987-1988 period because they were improperly dissuaded by Citizenship and Immigration Services (CIS).

Counsel claims that several "notorios" who were not licensed to practice immigration law in the United States prepared the applicant's Form I-689 Application for Adjustment from Temporary to Permanent Status. Counsel asserts that the applicant was therefore not properly represented "during the Amnesty application, and interview and during his application for adjustment of status under the LIFE Act and its Amendments."

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not

make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

No evidence has been presented which would suggest that the applicant had attempted to file a subsequent Form I-687 Application. The applicant has not provided any documents, which would establish that he filed a timely written claim for class membership. Also, there are no records within CIS, which demonstrate that the applicant applied for class membership. Given that, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reflects the applicant's criminal history in the State of California:

- 1) on May 20, 1983, the applicant was arrested by the [REDACTED] for use/under the influence of a controlled substance-PCP, and driving under the influence, both misdemeanors. On August 2, 1983, both offenses were dismissed. Case no. M159130.
- 2) on December 14, 1984, the applicant was arrested for driving under the influence, hit and run and driving without a driver's license, all misdemeanors. On February 10, 1986, the applicant was convicted of driving under the influence. The applicant was placed on probation for three years. The remaining offenses were dismissed. The applicant subsequently violated his probation and on October 21, 1986, the applicant was sentenced to serve 10 days in jail. On August 7, 2000, the conviction was expunged in accordance with section 1203.4 PC. Case no. M169371.
- 3) on January 15, 1985, the applicant was arrested by the Los Angeles Sheriff's Office for under the influence of a controlled substance and disorderly conduct. On April 23, 1985, the applicant was placed on diversion; however, it is not known if the diversion was successfully completed.
- 4) on August 4, 1986, the applicant was arrested for driving under the influence, driving with .10 percent or more alcohol in the blood and hit and run, all misdemeanors. On October 21, 1986, the applicant was convicted of driving with .10 percent or more alcohol in the blood and hit and run. The applicant was placed on probation for three years. The remaining offense was dismissed. On August 7, 2000, the convictions were expunged in accordance with section 1203.4 PC. Case no. M180272.
- 5) on March 11, 1989, the applicant was arrested for hit and run, a misdemeanor. On June 6, 1989, the applicant was convicted of the offense and placed on probation for one year. On August 7, 2000, the conviction was expunged in accordance with section 1203.4 PC. Case no. 89M01800.
- 6) On July 23, 1990, the applicant was convicted of driving under the influence and hit and run, both misdemeanors. On August 7, 2000, the convictions were expunged in accordance with section 1203.4 PC. Case no. 90M04225.

On appeal, counsel argues that all of the applicant's convictions have been dismissed and provides additional copies of the expungement orders. Counsel asserts that the attached Form K-4 from the California Department

of Motor Vehicles (DMV) lists no record of convictions, thus supporting the applicant's contention that he is not inadmissible under section 212(a) of the Act.

The DMV purges listings of offenses from its records on a periodic basis. Major violations remain on the list for ten years therefore, the applicant's offenses that occurred prior to 1994 would not be listed in the DMV's record.

Under the statutory definition of "conviction" provided at Section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, Int. Dec. #3377 (BIA 1999). Despite the expungements of the applicant's convictions, the applicant remains convicted, for immigration purposes, of the six offenses above.

It is noted that the director in his Notice of Decision concluded that the applicant was inadmissible under section 212(a) of the Act. The record, however, does not reflect any of the applicant's convictions resulted in multiple criminal convictions for which the aggregate sentences to confinement were five years or more, controlled substances, crime involving moral turpitude, controlled substance traffickers, security and related grounds or public charge. The applicant, however, is ineligible for the benefit being sought because of his six misdemeanor convictions. 8 C.F.R. § 245a.11(1) and 8 C.F.R. § 245a.18(a).

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