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U.S. Citizenship
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Services

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FILE:

Office: NATIONAL BENEFITS CENTER

Date: FEB 25 2005

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 office that originally decided your case. 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, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that 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. In addition, the director determined that the applicant had failed to provide requested court documents to establish that he was admissible under section 1140(c)(2)(D)(ii) of the LIFE Act. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel states that the applicant is awaiting the receipt of requested court documents relating to his criminal record.

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.

With the Form I-485 LIFE Act application, both counsel and the applicant submitted statements in which both asserted that the applicant is eligible for permanent residence under the provisions of the LIFE Act because he had attempted to file a Form I-687 legalization application under section 245A of the INA during the application period. While the applicant may have been front-desked (informed that he was not eligible for legalization) when he attempted to file a Form I-687 legalization application, this action alone does not equate to having filed a written claim for class membership in any of the requisite legalization class-action lawsuits.

Counsel also contended that the applicant subsequently filed a Form I-687 legalization application with an employee of the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS), at the Service's 24th Street office in New York, New York. Counsel claimed that this employee kept the applicant's Form I-687 legalization application and supporting documents, and informed him that he would receive an appointment letter at a later date. Counsel declares that the applicant never received any further correspondence from the Service regarding his legalization application or appointment. However, counsel's contentions regarding this second filing attempt can neither be confirmed nor denied from the record. Furthermore, a review of the record reveals no evidence that the applicant filed a written claim to class membership before October 1, 2000 as required by 8 C.F.R. § 245a.10.

The record reflects all appropriate indices and files were checked and it was determined that the applicant had not applied for class membership. Given his failure to document that he timely filed a written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

An applicant for permanent resident status under the provisions of LIFE Act must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act (INA). Section 1140(c)(2)(D)(i) of the LIFE ACT. An alien who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act.

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"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 8 C.F.R. § 245a.1(p). 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. 8 C.F.R. § 245a.1(o).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA). An alien is also excludable if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the INA.

A review of the record reveals that the applicant was arrested by the New York City Police Department on March 13, 1997, and charged with two felony offenses involving controlled substances, Criminal Possession of a Controlled Substance in the 1st degree and Criminal Sale of a Controlled Substance in the 1st degree.

In an attempt to determine whether the applicant's criminal record rendered him inadmissible, the director requested that the applicant provide certified court documents relating to the disposition of his criminal charges in the notice of intent to deny issued on November 19, 2003. While the applicant subsequently submitted documents related to his criminal record, such documents do not provide any information relating to the disposition of the criminal charges cited in the previous paragraph. As of the date of this decision, the applicant has failed to submit any certified court documents reflecting the disposition of these multiple felony charges both of which are crimes involving a controlled substance.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the INA and is otherwise eligible for adjustment of status under 8 C.F.R.

§ 245a. 8 C.F.R. § 245a.12(e)(5). The applicant has failed to meet this burden because he has not provided necessary evidence to establish that he is admissible under section 1140(c)(2)(D)(ii) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act on this basis as well.

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