

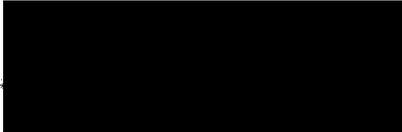
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
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:

Self-represented

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, the applicant submits documentation 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.

On his Form I-485 LIFE application, the applicant indicated that he was a class member of the "CSS V. Meese" legalization lawsuit. However, the applicant failed to provide any evidence to establish that he filed a written claim to class membership in any of the requisite legalization lawsuits prior to October 1, 2000. Furthermore, the record contains no evidence that the applicant asserted a claim to class membership to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) prior to the filing of his LIFE Act application on July 26, 2002.

In response to the notice of intent to deny issued on March 5, 2003, the applicant included a photocopy of a paycheck stubs from Golden Donut reflecting employment with this enterprise in the period from August 26, 2000 to October 6, 2000. However, the photocopied paycheck stubs do not establish that the applicant filed a written claim for class membership in any of the requisite legalization class action lawsuits.

The applicant also provided a photocopy of a letter the applicant provided a letter dated September 23, 2000, addressed to Attorney General Reno requesting that the applicant be registered in the CSS case. Pursuant to 8 CFR § 245A.10, a "Written claim for class membership means a filing, in writing, in one of the forms listed in § 245a.14 which provides the Attorney General with notice that the applicant meets the class definition in the cases of CSS, LULAC or Zambrano." The letter, which is a short and simple request to the Attorney General does not adequately make a case for prima facie eligibility. Moreover, the applicant does not explain why, if this letter was truly in his possession since September 23, 2000, it had not been submitted along with his LIFE Act application, as applicant were instructed to provide qualifying evidence *with* their applications.

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).

A review of the record reveals that the applicant was arrested by the Santa Barbara, California Sheriff's Office on April 10, 1993, and charged with the misdemeanor offense of providing false identification to a peace officer. The Federal Bureau of Investigation printout contained in the record indicates that the applicant was subsequently convicted of this offense in the Santa Maria, California Municipal Court and sentenced to five days in jail. The record further shows that the applicant was arrested by the Lompoc, California Police Department on March 4, 1994, and charged with the misdemeanor offense of providing false identification to a peace officer. A warrant for the applicant's arrest was subsequently issued by the Lompoc Police Department charging him with failure to appear in court for the charge arising from his arrest on March 4, 1994.

In an attempt to determine whether the applicant's criminal record rendered him inadmissible, the director requested that the applicant provide court documents relating to the disposition of his criminal charges in the notice of intent to deny issued on March 5, 2003. While the applicant did not include any court documents related to his criminal record with his response to the notice, he did submit court documents on appeal. However, the documents submitted by the applicant reflect that records relating to his criminal history had been destroyed and do not provide any information relating to the disposition of any criminal charges that have been brought against him. Rather, the court indictment submitted by the applicant clearly demonstrates that he was charged with two separate misdemeanor charges and two separate vehicle code violations as a result of his arrest on March 4, 1994. As of the date of this decision, the applicant has failed to submit any court documents reflecting the disposition of these multiple criminal charges.

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.