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U.S. Citizenship
and Immigration
Services

L2



FILE:



Office: NATIONAL BENEFITS CENTER

Date: **JAN 06 2005**

IN RE:

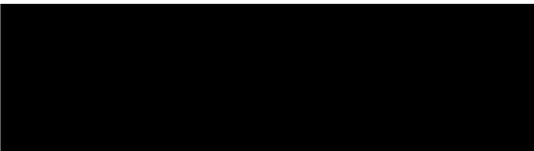
Applicant:



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 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 Legal Immigration Family Equity (LIFE) Act was initially denied by the Director, Missouri Service Center. The matter was subsequently reopened and denied again by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Missouri Service Center Director initially denied the application as he concluded that the applicant was inadmissible under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (INA), because he had been convicted of alien smuggling by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on July 26, 1979.

On appeal from the initial denial, counsel contended that the applicant was admissible because he had never been convicted of alien smuggling. Counsel submitted documentation in support of the appeal.

The record shows that the National Service Center Director subsequently reopened the case and denied the application again. This decision was based upon the determination that the applicant was inadmissible under section 212(a)(6)(E)(i) of the INA, because he had been convicted of alien smuggling by the Service on July 26, 1979. In addition, it was 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.

On appeal from this second denial, counsel reiterates his claim that the applicant is admissible because he had never been convicted of alien smuggling. Counsel submits documentation in support of this second appeal.

The record reflects that the applicant has submitted two separate appeals in these proceedings. Therefore, the applicant's two appeals and supporting documents shall be consolidated and treated as a single appeal for the purposes of this decision.

An applicant for permanent resident status under the provisions of LIFE Act must establish that he 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.

The directors were correct in the determination that the applicant had been apprehended and initially charged with illegal entry and alien smuggling by the Service on July 26, 1979. While the Federal Bureau of Investigation printout contained in the record indicates that the applicant was convicted of both offenses, the only definitive evidence contained in the record relating to this apprehension and disposition of such charges, shows that applicant was charged only with a violation of 8 U.S.C. § 1325, Illegal Entry into the United States. The record contains no conclusive evidence to support the determination that the applicant was charged with and subsequently convicted of alien smuggling. Moreover, the record contains an Order to Show Cause and duly executed Warrant of Deportation that reflect the applicant was determined to have entered the United States without inspection in violation of section 241(a)(2) of INA and deported to Mexico on August 1, 1979. The record contains no evidence to indicate that there has ever been a formal finding that the applicant is inadmissible because he had been deported. Consequently, it must be concluded that the applicant is admissible as he was not convicted of alien smuggling and, therefore, this issue need not be discussed further.

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 Act application, the applicant indicated that he had previously applied for class membership in one of requisite legalization lawsuits. In support of this claim, the applicant included a Form I-687, Application for Temporary Resident Status (legalization) under Section 245A of the INA. However, a review of the Form I-687 legalization application reveals that it was prepared contemporaneously with the applicant's LIFE Act application on June 15, 2002. The record shows that the Form I-687 legalization application was not submitted to the Service prior to the proper filing of his LIFE Act application on January 24, 2003. Therefore, the Form I-687 legalization application cannot be considered as evidence that the applicant filed a written claim for class membership before October 1, 2000.

With his LIFE Act application, the applicant also provided documentation relating to the prior adjudication of his prior Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker (SAW) under Section 210 of the INA. The applicant timely submitted the Form I-700 special agricultural worker application on November 30, 1988. This special agricultural worker application was denied on October 4, 1991. The applicant appealed this denial of the special agricultural worker application and this appeal was dismissed by the AAO on August 12, 1999. 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 210 of the INA.

The record reflects all appropriate indices and files were checked and it was determined that the applicant had not applied for class membership in a timely manner. Such check included a separate file [REDACTED] which contained documents related to prior deportation proceedings instituted after the applicant had been apprehended by the Service on July 26, 1979 as discussed above. That file has now been consolidated into the current record of proceedings. 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.

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