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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE:



Office: NATIONAL BENEFITS CENTER

Date: JAN 14 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 initially denied by the Director, Missouri Service Center and then remanded by the Administration Appeals Office (AAO). The director's subsequent decision to recommend that the application be denied again has been certified to the AAO. This decision will be affirmed.

In his initial decision, 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 and, therefore, denied the application.

On appeal from the director's initial decision, counsel asserted that the applicant relied upon representations made by his former attorney that he was an applicant for membership in one of the requisite legalization class action lawsuits. Counsel indicated that the applicant's former attorney never pursued his claim to class membership and that the applicant should not be held responsible for having retained ineffective counsel. Counsel contended that the applicant has provided documentation to support this claim.

In the subsequent certified decision, the director concluded that the evidence provided by the applicant failed to establish that he filed an actual written claim for class membership in a timely manner.

In response to the certified decision, counsel submits a brief in which he asserts that the applicant should be considered a class member in one of the requisite legalization lawsuits because of the completely ineffective assistance of counsel rendered by his former attorney.

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. The 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 included a separate affidavit in which he asserted that he filed a claim to class membership prior to October 1, 2000. However, the applicant failed to submit any evidence to corroborate his assertion that he had had filed a timely claim to class membership. Furthermore, the record reflects that the applicant timely filed a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker (SAW) under Section 210 of the Immigration and Nationality Act (INA), on September 10, 1987. This special agricultural worker application was ultimately denied on August 10, 1990. The applicant appealed this denial of the special agricultural worker application and this appeal was dismissed by the AAO on December 20, 1993. 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.

In response to the notice of intent to deny, the applicant submitted a statement in which he declared that he retained the services of attorney, Sheldon Walker, because he wanted to file for legalization. The applicant claimed that both a Form I-700 special agricultural worker application and a "CSS application" were prepared

and filed on his behalf by this attorney. In support of his claim, the applicant submitted a Form I-687, Application for Temporary Resident Status (legalization) under Section 245A of the INA, dated April 10, 1989. The applicant also included correspondence from the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) to Sheldon Walker regarding the applicant's separate special agricultural worker application.

The Form I-687 legalization application is listed in 8 C.F.R. § 245a.14 as a document that may be furnished in an effort to establish that an alien had previously applied for class membership. Although this document is dated prior to October 1, 2000, the statutory deadline for the filing of written claims for class membership in a legalization class-action under section 1104 of the LIFE Act, the applicant has not provided any independent evidence that would tend to corroborate his claim that the Form I-687 application was submitted to the Service or its successor CIS prior to his response to the notice of intent to deny in the current proceedings. The applicant offered no explanation as to *why*, if he truly had this document referencing his purported claim to class membership in his possession since at least April 10, 1989, he did not submit such documents with his LIFE Act application. Applicants were instructed to provide qualifying evidence *with* their applications and the applicant did include other supporting documentation with his LIFE Act application.

The applicant claimed that both a Form I-700 special agricultural worker application and a "CSS application" were prepared and filed on his behalf by his former attorney Sheldon Walker. However, a review of both the Form I-700 special agricultural worker application submitted to the Service on September 10, 1987 and the Form I-687 legalization application included with applicant's response to the notice of intent to deny reveals no indication that the applications were prepared by a third party, but rather demonstrates that the applicant himself completed both applications. While documentation contained in the record shows that Sheldon Walker previously represented the applicant in divorce proceedings before the New York State Supreme Court in October 1985, the record shows that Mr. Walker did not begin representing the applicant before the Service regarding his Form I-700 special agricultural worker application until such application had been denied for the first time on March 2, 1988. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, executed by Mr. Walker and reflecting his representation of the applicant, which was received by the Service on April 18, 1988, and had been included with the appeal to the initial denial of the special agricultural worker application.

On appeal from the initial denial of the LIFE Act application, counsel claimed that the applicant relied upon representations made by Sheldon Walker that he was a class member in a legalization class action lawsuit. Counsel asserted that the completed Form I-687 legalization application supported the applicant's belief that a claim to class membership had been filed by Mr. Walker. Counsel inferred that the applicant should not be held responsible for having retained ineffective counsel.

In response to the subsequent certified decision denying the application for a second time, counsel submits a brief in which he claims that the applicant attempted to apply for legalization in June 1987, but was turned away after being informed by an employee of the Service that he was not eligible because of a brief departure from the United States in 1982. It must be noted that counsel's assertion that the applicant had been front-desked (informed that he was not eligible for temporary residence) is the first instance that a claim such circumstances occurred has been put forth by either the applicant or counsel in these proceedings. While the applicant may have been front-desked when he attempted to file a legalization application during the original application period in June 1987, 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 contends that the applicant then retained Sheldon Walker to prepare both a CSS class membership application and a Form I-700 special agricultural worker application. Counsel claims that the applicant paid \$2,500.00 in cash to Mr. Walker and was provided with a receipt. Counsel asserts that the applicant was provided with copies of all his papers including a copy of the Form I-687 legalization application that had been prepared by

his former attorney and had been previously submitted in the current proceedings. As previously discussed, a review of both the Form I-700 special agricultural worker application submitted to the Service on September 10, 1987 and the Form I-687 legalization application initially included with applicant's response to the notice of intent to deny reveals no indication that the applications were prepared by a third party, but rather demonstrates that the applicant himself completed both applications. While counsel claims that the applicant was provided a receipt reflecting a cash payment to Mr. Walker for the preparation of both the Form I-687 application and the Form I-700 special agricultural worker application, neither counsel nor the applicant has provided the receipt or any other evidence to demonstrate that Mr. Walker prepared either application. Furthermore, the record shows that Mr. Walker initiated his representation of the applicant before the Service on April 18, 1988, with the filing of the applicant's appeal to the initial denial of his Form I-700 special agricultural worker application.

Counsel states that the applicant thereafter believed that he was a class member in a legalization class action lawsuit based upon the misrepresentations of his former attorney. Counsel argues that the applicant received such ineffective assistance of counsel that his right to due process had been violated. Counsel indicates that it is his belief that Mr. Walker is currently imprisoned for fraud committed in unspecified immigration matters. Counsel asserts that the applicant should be considered a class member because of the severity of this due process violation and cites the holdings reached in the following cases to support this assertion; *Raibu v. INS*, 41 F.3d 879 (2nd Cir. 1999), *Colindres-Aguilar V. INS*, 819 F.2d 259 (9th Cir. 1987), *Saba v. INS*, 52 F. Supp.2d 1117 (N.D. Cal.1999), *Motta v. District Director*, 869 F. Supp. 80 (D. Mass. 1994), *Baques-Valles v. INS*, 779 F.2d 483 (9th Cir. 1985), *Roque-Carranza v. INS*, 778 F.2d 1373 (9th Cir. 1985), *Liu v. INS*, 55 F.3d 421 (9th Cir. 1995), *Rashtabadi v. INS*, 23 F.3d 1562 (9th Cir. 1994), *Wang v. Reno*, 81 F.3d 808 (9th Cir. 1996), *Matter of Rodriguz-Lariz v. INS*, 282 F.3d 121, (9th Cir. 2002), *Matter of Lozado*, 19 I. & N. Dec. 637 (BIA 1998), *Figeroa v. INS*, 886 F.2d 76 (4th Cir. 1989), and *Matter of Grijalva*, 21 I. & N. Dec. 472 (BIA 1996).

However, the record contains no evidence to demonstrate that the applicant retained Sheldon Walker to provide representation before the Service on his behalf for any purpose other than the pursuit of his appeal to the denied Form I-700 special agricultural worker application. The record shows that Mr. Walker filed a substantive appeal on the applicant's behalf to the Service on April 18, 1988, and that Mr. Walker continued to provide competent representation with the subsequent filing of a Freedom of Information Act request for a copy of the record dated February 1, 1989, and a second appeal that was received by the Service on September 7, 1990. A review of the two appeal statements submitted by Sheldon Walker reveals he put forth cognitive and meaningful arguments specifically addressing and objecting to the reasons cited for the basis for each of the Service's two denials of the Form I-700 special agricultural worker application. Even if counsel had provided documentation to demonstrate that Mr. Walker is currently imprisoned for immigration fraud, the record contains no evidence to support counsel's claim that Mr. Walker provided such ineffective assistance of counsel that the applicant's right to due process had been violated. An examination of the cases cited above reveals a finding of ineffective counsel only in those circumstances where clear and convincing evidence had been produced to demonstrate that an attorney either acted or failed to take action that significantly prejudiced as client by depriving him or her of the right to due process. The facts of the current proceeding are readily distinguishable from the cases above in that the evidence contained in the record in this case demonstrates that Attorney Sheldon Walker provided vigorous and competent legal representation to the applicant in his capacity as attorney of record before the Service.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

The factors cited above raise questions regarding the authenticity and credibility of the supporting documentation, as well as the applicant's claim that he filed for class membership. Given these circumstances, it is concluded that

the photocopied document provided by the applicant in support of his claim to class membership is of questionable probative value.

Doubt cast on any aspect of the evidence 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. *See Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has failed to submit documentation that credibly establishes his having filed a timely written claim for class membership in one of the aforementioned legalization class-action lawsuits. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act. Therefore, the decision recommending denial of the LIFE Act application shall be affirmed.

ORDER: The certified decision recommending the denial of the application for permanent resident status is affirmed.