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U.S. Citizenship
and Immigration
Services

JAN 27 2005

FILE:

Office: NATIONAL BENEFITS CENTER

Date:

IN RE:

Applicant:

PETITION:

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. All documents have 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 sustained.

The directors both concluded the applicant had not established that she 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 initial denial, counsel reiterated the applicant's claim that she applied for class membership.

The record shows that subsequent to the reopening of the case, the applicant was afforded the opportunity to submit additional material to supplement the appeal. The record further shows that counsel has subsequently submitted additional material to supplement the appeal. Therefore, this material shall be incorporated into the applicant's appeal.

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.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. See 8 C.F.R. § 245a.12(e). An alien applying for adjustment of status under section 1104 of the LIFE Act has the burden of proving his or her eligibility by a preponderance of the evidence.

With her LIFE Act application, the applicant submitted a photocopy of an appointment notice dated March 28, 1991, from the Service's Legalization Office in Houston, Texas, which bears the applicant's name, date of birth, and address, and scheduled her for an interview at 8:00 A.M. on September 17, 1991, regarding the late filing of a legalization application under either the CSS or LULAC case.

In the most recent denial of the application, the director noted that a review of the relevant records failed to demonstrate any evidence that the appointment notice had been issued to the applicant or that she had appeared for such an interview and made a claim to class membership. However, the director failed to establish that the information in the appointment notice was inconsistent with the claims made on the application or that such information was false. If the director had questions regarding the credibility of the supporting document provided by the applicant, a request should have been issued to her to provide the original of the photocopied document. The applicant's own testimony taken in context with supporting

evidence in certain cases can logically meet the preponderance of evidence standard. As stated in *Matter of E-M--*, 20 I. & N. Dec. 77 (Comm. 1989), when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. Clearly, the supporting document is a relevant document under 8 C.F.R. § 245a.14. As such, the applicant's claim to class membership must be considered in light of such testimony and evidence.

The independent and contemporaneous evidence contained in the record supports the assertion that the applicant put forth a claim to class membership and that she was scheduled to appear for an interview regarding either *CSS* or *LULAC* class membership at 8:00 A.M. on September 17, 1991, at the Service's Houston, Texas legalization office. Therefore, it must be concluded that the applicant has demonstrated that she filed a written claim to class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1140 of the LIFE Act. Accordingly, the matter will be forwarded to the appropriate district office for further processing and adjudication of the LIFE Act application.

ORDER: The appeal is sustained. The director shall forward this matter to the proper district office for the completion of adjudication of the application for permanent residence.