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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NATIONAL BENEFITS CENTER Date: **MAR 04 2005**

IN RE: Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 concluded that 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, the applicant indicated that she was including documentation establishing prima facie evidence that she had requested class membership and had not previously provided such documents because they had been in Mexico.

The National Benefits Center Director subsequently reopened the matter after the applicant had filed her appeal. The director 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. In addition, the director determined that the applicant had failed to provide requested court documents to establish that she 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.

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. However, as of the date of this decision, the applicant has failed to submit any additional material in support of the appeal. Therefore, the record shall be considered complete.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden and, therefore, is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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 her Form I-485 LIFE application, the applicant indicated that she was a class member of the "CSS V. Meese" legalization lawsuit. However, the applicant failed to provide any evidence to establish that she 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 her LIFE Act application on May 23, 2002.

In response to the notice of intent to deny issued by the Missouri Service Center on September 17, 2002, the applicant provided a letter dated September 14, 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 her possession since September 14, 2000, it had not been submitted along with her LIFE Act application, as applicant were instructed to provide qualifying evidence *with* their applications.

On appeal, the applicant the applicant indicated that she was including her old Form I-687 legalization application and "Form for Determination of Class Membership" to demonstrate that she had requested class membership. The applicant declared that she had not previously provided such documents because they had been in Mexico. However, a review of the record shows that the applicant failed to include these documents with her appeal. Contrary to the applicant's claim, there is nothing in the record to indicate that she filed an actual claim for class membership prior to October 1, 2000. Therefore, the applicant's statements on appeal are not compelling.

The record reflects all appropriate indices and files were checked and it was determined that the applicant had not applied for class membership. Given her failure to document that she 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 San Luis Obispo, California Sheriff's Office on July 28, 1993 and charged with the criminal offense of hit and run. In an attempt to determine whether the applicant's criminal record rendered her inadmissible, the National Benefits Center Director requested that the applicant provide court documents relating to disposition of this criminal charge in the notice of intent to deny issued on March 24, 2004. However, the applicant has failed to provide any court documents related to her arrest and the disposition of the hit and run charge.

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 she has not provided necessary evidence to establish that she 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.