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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**

PUBLIC COPY

LA

FILE:

Office: NATIONAL BENEFITS CENTER

Date:

MAR 08 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 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.

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 denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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, the applicant reiterates his contention that he filed a written claim for class membership prior to October 1, 2000. The applicant includes copies of previously submitted documentation.

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.

With his Form I-485 Life Act application, the applicant included a Form I-688B, Employment Authorization Card. While the notation on the employment authorization card indicated that the applicant had been granted such authorization under 8 C.F.R. § 274a.12(c)(09) as an individual who had applied for permanent resident status under the provisions of 8 C.F.R. § 245, the record contains no evidence that the applicant had applied for permanent residence under any provision of the Immigration and Nationality Act (INA) or any public law amending the INA, prior to the submission of his LIFE Act application on June 3, 2003. In addition, the record shows that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) initially issued the Form I-688B to the applicant on September 21, 2001, well before the date the LIFE Act application had been filed. Moreover, a review of the electronic record fails to reveal any information as to either the relevant code such employment authorization under or the reason the applicant was initially issued the Form I-688B.

In his subsequent response to the notice of intent to deny, the applicant provided photocopies of the following relevant documents:

- a letter from the Service's New York City District Office dated July 8, 1994, to the applicant informing him that his Freedom of Information Act request for a copy of the record of proceeding had been forwarded to the appropriate Service office in San Antonio, Texas for processing;
- an undated letter from the Catholic Migration and Refugee Office of the Diocese of Brooklyn declaring that the applicant appeared to be qualified for legalization under the CSS case; and,
- a card containing the full title and address of Service's Manhattan Legalization Office on 24th St., in New York City, the hand written notations "CSS," "DATE," "1/2/91," and [REDACTED] and an indiscernible bar code.

The applicant also submitted a personal statement in which he declared that he had made a timely claim to class membership in the CSS class-action lawsuit prior to October 1, 2000. The applicant characterized the card cited above as a "CSS receipt," and asserted that this as well as the other documents cited above served as evidence that he had made a timely claim.

In denying the application, the director concluded that the "CSS receipt" submitted by the applicant did not appear to be anything issued by the Service. However, the director's conclusion must be considered to be speculative, as the record contains no evidence to demonstrate that any effort was undertaken to verify the authenticity of the document. In addition, the director failed to establish that the information in this document was inconsistent with the claims made by the applicant 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 him to provide the original of the photocopied document. Furthermore, the director failed to address the two additional documents provided by the applicant in his response to the notice. 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 documents are relevant documents 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 tends to support the assertion that the applicant put forth a claim to class membership prior to October 1, 2000. As discussed above, the applicant was issued employment authorization by the Service as an individual who had applied for permanent resident status under the provisions of 8 C.F.R. § 245, despite the fact that both the administrative and electronic records contain no evidence to demonstrate that he either applied for such benefits or that he was entitled to receive employment authorization under this regulation. This is considered significant because class members of the requisite legalization lawsuits are issued employment authorization as a result of having made a prima facie claim to eligibility for benefits under the provisions of 8 C.F.R. § 245a. Therefore, it must be concluded that the applicant has demonstrated that he 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.