



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



62

FILE:



Office: NATIONAL BENEFITS CENTER

Date: AUG 18 2006

MSC 02 087 61465

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. 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, Chief
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. The director certified the matter to the Administrative Appeals Office (AAO) for review. The decision will be affirmed.

The director concluded that the applicant had not established that he filed a written claim for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. Therefore, the director denied the application.

The applicant did not file a brief or other evidence with the AAO during the 33 days following the date of the director's October 18, 2005 denial.

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 at 8 C.F.R. § 245a.14 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. Most notably, the regulations at 8 C.F.R. § 245a.14(d) indicate that such forms of evidence include Service documents addressed to the alien, or his or her representative, that discuss matters relating to the class membership application and that include the date as well as the alien's name and A-number. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14(g). Where the submitted document is not in strict compliance with the regulations in that it does not include an A-number, such evidence will be evaluated as a "relevant document" under 8 C.F.R. § 245a.14(g). See *Matter of E-M-*, 20 I&N Dec. 77, 81 (Comm. 1989)(where the Commissioner determined that when an applicant for original legalization submits a supporting document which is not in full compliance with the regulation specific to that document, the document should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L).)

The record includes the following documents which potentially relate to a timely, written request for class membership:

1. The Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)* which is not dated.
2. Three documents which purport to be copies of notices issued to the applicant by the U. S. Immigration and Naturalization Service Legalization Office regarding class membership interviews. The notices indicate that the applicant was to appear for interview on April 12, 1993, October 15, 1993 and April 29, 1994.

3. The affidavit of [REDACTED] dated January 31, 2002 which indicates that on April 12, 1993 the affiant accompanied the applicant to his class membership interview.
4. The affidavit [REDACTED] January 31, 2002 which indicates that on October 15, 1993 the affiant accompanied the applicant to his class membership interview and served as interpreter at that interview.
5. The Form I-687, Application for Status as a Temporary Resident, dated May 10, 1993.
6. Four affidavits intended to corroborate the information that the applicant provided on the Form I-687 dated May 10, 1993 which were signed on January 6, 1993, January 14, 1993, March 15, 1993 and March 31, 1993.

It is noted that included in the record of proceedings are: the Form I-589, Request for Asylum in the United States, which the applicant filed with the Service on February 25, 1994; the Form I-485, Application to Register Permanent Resident or Adjust Status, which the applicant filed with the Service on October 31, 1997 in conjunction with the immigrant petition that the applicant's U.S. citizen wife filed on his behalf; and the Form I-687 dated November 19, 2005 which the applicant filed with the Service on November 22, 2005 in conjunction with his CSS/Newman (LULAC) Class Settlement application. The applicant has already testified regarding the truthfulness of the information on the Form I-589 and the Form I-485 filed October 31, 1997. The Service has not yet interviewed him regarding the Form I-687 that he filed on November 22, 2005.

On December 26, 2001, the applicant submitted the Form I-485 pursuant to LIFE legalization guidelines.

On January 25, 2002, the director issued a notice of intent to deny (NOID) in which he stated that the applicant had failed to establish that he had submitted a timely, written application for class membership in one of the requisite legalization class-action lawsuits. In the NOID, the director did not evaluate any of the evidence which the applicant provided relating to a timely, written application for class membership.

In response to the NOID, the applicant resubmitted the following evidence that had been included with the Form I-485 filed on December 26, 2001: a copy of the Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)* which is undated and two documents which purport to be copies of notices issued to the applicant by the U. S. Immigration and Naturalization Service Legalization Office regarding class membership interviews on October 15, 1993 and April 29, 1994. He also submitted a copy of a third class membership interview notice for April 12, 1993 and the affidavits listed above at 2 and 3. He did not provide further comment.

On September 9, 2002, the director denied the application for the reasons set out in the NOID. In the denial, the director again did not specify what he found lacking in the applicant's evidence.

On appeal from the September 9, 2002 decision, the applicant submitted the Form I-687 dated May 10, 1993 as well as copies of documents already in the record. He also provided a statement which indicated: that he filed the Form I-687 with the Service during May 1993; that he attended legalization class member interviews on April 12, 1993, October 15, 1993 and December 3, 1993; and that at the December 3, 1993 interview an Immigration Officer informed him that a decision regarding his application for class membership would be mailed to him, but the Service never did mail him a decision.

The September 9, 2002 notice of decision was withdrawn. The AAO remanded the matter to the Director, National Benefits Center, instructing that office to provide the applicant a notice of decision which identified any deficiencies in the evidence and which documented the director's efforts to check Service records for evidence that the applicant applied for class membership such that the applicant might be able to provide a meaningful appeal. *See* 8 C.F.R. § 245a.20(a)(2).

On October 18, 2005, the director denied the application and certified his decision to the AAO. In the decision, he identified deficiencies in the applicant's evidence and specified that all Service records and indices indicated that, prior to October 1, 2000, the applicant had not filed any documents with the Service that pertained to the original legalization program or to LIFE legalization.

In his decision, the director also indicated that the legalization class member interview notices which the applicant claimed the Service had issued to him in connection with a timely, written application for class membership would not be considered probative evidence because the notices do not include an A-number for the applicant as required at 8 C.F.R. § 245a.14(d). This point in the director's decision is withdrawn. Where such notices do not include an A-number in compliance with 8 C.F.R. § 245a.14(d), they will be evaluated as "other relevant document(s)" pursuant to 8 C.F.R. § 245a.14(g). *See Matter of E-M-*, 20 I&N Dec. 77, 81 (Comm. 1989).

In addition, the director indicated in his decision that the Form I-687 dated May 10, 1993 would not be considered probative evidence because the form does not include an A-number as required at 8 C.F.R. § 245a.14(b). The regulations at 8 C.F.R. § 245a.14(b) refer to Service documents addressed to the applicant which grant or deny class membership, not to applications such as the Form I-687. Thus, this point in the director's decision is also withdrawn.

The Form I-687 may be furnished in an effort to establish that an alien filed a timely, written claim for class membership. However, it is only the Form I-687 filed in conjunction with the class membership application which supports such a claim. *See* 8 C.F.R. § 245a.14(d)(6). The applicant has provided no credible evidence to establish that the Form I-687 dated May 10, 1993 was filed with the Service in conjunction with an application for class membership in one of the requisite legalization class-action lawsuits or even that it was filed with the Service at all.

As indicated by the director in the October 18, 2005 decision, the authenticity of the Form I-687 and the credibility of the applicant's claim of having filed it in 1993 are called into question because the applicant did not include a copy of this form with the other supporting documents that relate to class

membership which he filed with the Form I-485 on December 26, 2001. He also did not include a copy of the form or even assert that he filed the form with the Service during 1993 in his 2002 rebuttal. Further, the applicant offered no explanation as to why, if he had filed the Form I-687 in 1993 and if he had a copy of the form, he did not submit it sooner and did not assert sooner that he had filed it with the Service in conjunction with a timely, legalization class membership application.

The credibility of the applicant's claim that he filed the Form I-687 in 1993 and the authenticity of the form is called further into question in that the information on the form directly contradicts other information in the record. The applicant's Form I-589 filed February 25, 1994 specifies that the applicant first entered the United States on April 29, 1992;¹ whereas the Form I-687 dated May 10, 1993 indicates that the applicant resided continuously in the United States from February 1981 until December 1992. The applicant also specified on the Form I-589 that he was politically active in Bangladesh from 1982 until 1991 when he fled to Canada. In addition, the Form I-589 states that two of the applicant's children were born in Bangladesh during the mid-nineteen-eighties, which also tends to suggest that the applicant was not yet in the United States during the early to mid-nineteen-eighties. Further, on the applicant's Form I-485 filed October 31, 1997 in conjunction with the immigrant petition which the applicant's U.S. citizen wife filed on his behalf, the applicant specified that he made his first entry into the United States during 1992.

Thus, the Form I-687 dated May 10, 1993 is not a credible document and the applicant's assertion that he filed the form with the Service during 1993 is not credible. In turn, this form does not provide probative evidence regarding the applicant's claim that he filed a timely, written application for class membership.

The authenticity of the Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)* which is undated is called into question in that the form also contains information that contradicts other evidence in the record. The form specifies that the applicant was absent from the United States only once between 1981 and 1988 and that he departed on November 10, 1987 and returned on December 10, 1987. Yet, the Form I-687 filed November 22, 2005 in conjunction with the applicant's *CSS/Newman (LULAC)* Class Settlement application and the applicant's supporting statement specify that the applicant left the United States on June 24, 1987 and returned on July 18, 1987. The Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)* also specifies that the applicant entered the United States on February 2, 1981; whereas the Form I-589 and the Form I-485 filed October 31, 1997 specify that the applicant first entered the United States during 1992. Thus, this form is not a credible document. Given this and given that the form is not dated, the form does not provide probative evidence regarding the applicant's claim that he filed a timely, written application for class membership.

The applicant specified that the Service interviewed him three times in 1993 regarding his application for class membership and that at his final interview on December 3, 1993 the Immigration Officer

¹ Initially, the applicant indicated at Part 24 of the Form I-589 that he first entered the United States on November 19, 1985. However, during the asylum interview on September 13, 1994, while testifying under oath, the applicant had the Asylum Officer correct this response to indicate that he first entered the United States on April 29, 1992.

informed him that he would receive a decision by mail. These claims are called into question in that the appointment notices which the applicant submitted indicate that the Service actually scheduled the applicant for an interview after December 3, 1993 on April 29, 1994. According to the third interview notice, on December 3, 1993, the Service deleted the December 3, 1993 appointment date on that notice and scheduled the applicant to return for an interview on April 29, 1994. The discrepancies between the applicant's statements and what the appointment notice states took place on December 3, 1993 cast doubt on the applicant's claim that that he attended a December 3, 1993 class membership interview. It also casts doubt on his claim that the Service issued him the interview notice dated December 3, 1993 which he submitted into evidence. Thus, his claim that he attended a December 3, 1993 class membership interview is not credible, and the class membership interview notice dated December 3, 1993 and addressed to the applicant is not a credible document.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given that so many of the applicant's claims of having submitted a timely, written application for class membership and so many of the documents submitted in support of these claims are quite sharply contradicted and undermined by other evidence in the record as well as being inconsistent as to each other, it is concluded that all of his documents and assertions regarding having submitted a timely, written application for class membership are not credible.

The applicant has failed to submit documentation which establishes that he filed a timely, written claim for class membership in one of the requisite legalization class-action lawsuits. The record reflects that all appropriate indices and files were checked and it was determined that the applicant had not applied for class membership in a timely manner. Given his failure to document that he filed a timely written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

It is also noted that the record indicates that in 1998 the applicant was ordered removed by an Immigration Judge under the name and A-number listed on this application. During 1996, he was also ordered removed under the name [REDACTED] and A-number [REDACTED].

ORDER: The director's decision dated October 18, 2005 is affirmed. The application is denied.