



U.S. Citizenship
and Immigration
Services

L2

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE:

MSC 03 123 60423

Office: NATIONAL BENEFITS CENTER

Date:

AUG 11 2006

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. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, the applicant submits a statement in which he indicates that he is eligible to adjust to permanent residence under the provisions of the LIFE Act because he had applied for class membership in one of the requisite legalization class-action lawsuits. The applicant did not submit any supporting documents on 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible documentation to demonstrate that, prior to October 1, 2000, he filed a written claim for class membership in one of the legalization class-action lawsuits that are cited above. With his Form I-485 LIFE Act application, the applicant included:

- A Form I-687, Application for Status as a Temporary Resident, that the applicant signed and dated on November 10, 1987;
- A statement prepared by a Qualified Designated Entity (QDE) dated November 10, 1987 in which the applicant acknowledges that this QDE advised him not to file for legalization but that he decided to disregard this advice and had the QDE file his legalization application;
- A Form for Determination of Class Membership in *CSS v. Meese* that the applicant signed and dated on Oct. 28, 1988; and,
- A Legalization Front-Deskling Questionnaire that the applicant signed and dated on August 2, 2000.

According to 8 C.F.R. § 245a.14, such documents as these may be furnished in an effort to establish that an alien had applied for class membership.

However, the director explained in the Notice of Intent to Deny (NOID) that he held the authenticity of the supporting documents that the applicant submitted in serious doubt for various reasons. For example, the director pointed out that the applicant claimed to have filed the Form I-687 with the Service. Yet, the director could find no record of any such filing in CIS' electronic databases or in any file that the Service had created for the applicant. The director stated further that a search of Service records and indices failed to show any evidence that the applicant had submitted any document to the Service prior to the filing of his Form I-485 LIFE Act application on December 21, 2003. Finally, the director made clear that the applicant had also failed to establish his identity. That is, the applicant had submitted only one identity document, a birth certificate that recorded the birth of a female.

In his response to the NOID, the applicant resubmitted copies of certain documents that he had included with his Form I-485 without making any further statement.

In the denial, the director denied the application for the reasons set out in the NOID.

On appeal, the applicant argues that the burden is on the Service to demonstrate that the Service did not receive from him a timely Form for Determination of Class Membership in *C.S.S. v. Meese* and a timely Legalization Front-Deskling Questionnaire. He also indicates that it is appropriate that the Service has no record that he filed a Form I-687 because he did not file this form. He indicates that he has always maintained that he did not file Form I-687 because he was advised not to do so.

The applicant's claim that he never filed his Form I-687 contradicts statements made in his supporting documents. That is, with his LIFE application, the applicant included a document dated November 10, 1987 that purports to be a form prepared by a QDE named the Congress of Racial Equality. The form indicates that this QDE filed the Form I-687 with the Service on the applicant's behalf. Specifically, the form acknowledges that the applicant had the QDE file his Form I-687 even though the QDE advised him that he "...lack[ed] acceptable sufficient documentation for legalization under the Immigration and reformed act [*sic*] of 1986." This QDE form is attached to the Form I-687, it is signed by the applicant, and it bears the same date as the applicant's Form I-687. Moreover, in the NOID and the denial notice, the director referred specifically to this form and its claim that the QDE had filed an application with the Service on the applicant's behalf. The applicant did not dispute this point in his response to the NOID or on appeal. The contradiction between the statements made on the applicant's supporting document and the applicant's statement made on appeal call both the authenticity of the applicant's supporting documents and the credibility of his statements made on appeal into question.

Moreover, it is noted that Qualified Designated Entities or QDEs are agencies, associations, etc. that the Service determined were qualified to assist aliens in preparing applications under the *Immigration Reform and Control Act of 1986 (IRCA)*. See 8 C.F.R. § 245a.1(l). As such, it would seem that representatives at each QDE would be familiar with the correct title of this act. Yet, the

standardized QDE form attached to the applicant's Form I-687 indicates that representatives at this QDE referred to *IRCA* as the "Immigration and reformed act of 1986". This calls the authenticity of the applicant's supporting documents further into question.

Further, the applicant indicated on certain supporting documents, such as the Form for Determination of Class Membership in *CSS v. Meese* and the Legalization Front-Desk Questionnaire, that the QDE advised him not to file Form I-687 because he had violated the "Advance Parole rule" by exiting the United States during 1987 without first obtaining Advance Parole from the Service. Yet, the QDE form dated November 10, 1987 indicates that the QDE determined that the applicant could not qualify for benefits under *IRCA* because he did not have "acceptable sufficient documentation". The contradictory statements on these supporting documents also call their authenticity into question and further undercut the credibility of the applicant's claim.

Finally, the applicant failed to address the director's claim that the one identity document that he submitted did not appear to refer to him. This calls the credibility of his documents and of his claim further into question.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish 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, and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.12(e). The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Here, the submitted evidence is not credible.

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. 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.

ORDER: The appeal is dismissed. This decision constitutes a final notice of eligibility.