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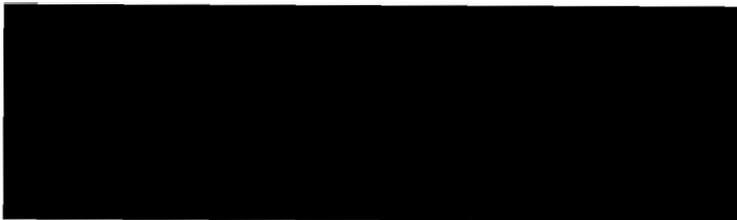
Applicant:



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 and then remanded by the Administration Appeals Office (AAO). The subsequent decision by the Director, National Benefits Center, to recommend that the application be denied again has been certified to the AAO. This decision will be withdrawn and the appeal sustained.

In the initial decision, 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 from the director's initial decision, the applicant reiterated his claim that he had applied for membership in one of the requisite legalization class action lawsuits at the Immigration and Naturalization Service's, or the Service's (now Citizenship and Immigration Services, or CIS) office in Miami, Florida on July 25, 1991 and that he subsequently appeared for an interview at this office on May 20, 1992.

In the subsequent certified decision, the director concluded that the evidence provided by the applicant failed to establish that he filed an actual written claim for class membership in a timely manner. The applicant was granted thirty days to submit additional material in response to the certified decision. In response, counsel indicates that the director's most recent denial of the LIFE Act application is erroneous.

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 the Form I-485 LIFE Act application, the applicant submitted the following documents in an attempt to establish a claim to class membership:

- A Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act) that is signed by the applicant and dated July 24, 1991;

- An undated Form I-690, Application for Waiver of Grounds of Excludability (now Inadmissibility), that is signed by the applicant and listed the applicable ground of inadmissibility as section 212(9)(c) of the Immigration and Nationality Act (Act); and,
- A photocopy of an appointment notice dated July 25, 1991 from the Service's Office in Miami, Florida, which bears the applicant's name, address, and birth date and scheduled him for an interview at 10:00 P.M. on May 20, 1992.

In response to the notice of intent to deny issued on November 1, 2001, the applicant submitted a photocopy of Form I-687 application that is signed by the applicant and dated July 25, 1991. The applicant also provided an affidavit signed by [REDACTED] who attested to the applicant's preparation of papers for an upcoming appointment with the Service in Florida on May 20, 1992.

In the subsequent certified denial, the director took issue with the fact that the applicant submitted two Form I-687 applications with different dates. However, the fact that the applicant provided two separate and distinct Form I-687 applications both dated well before October 1, 2000 cannot be viewed as having a negative impact on his claim to class membership, as the applicant could have easily prepared two different Form I-687 applications. The relevant evidence in the record as it relates to applicant's claim of class membership is the photocopied Service appointment notice. The record contains no evidence to demonstrate that any effort was undertaken to verify the authenticity of this supporting documents with the particular office that purportedly issued the appointment notice; rather the director referred to a search of general databases and indices. In addition, the director failed to establish that the information in the supporting documents 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 documents provided by the applicant, a request should have been issued to him to provide the originals of the photocopied documents. 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 Service documents cited above 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. 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 certified decision recommending the denial of the application for permanent resident status is withdrawn. 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.