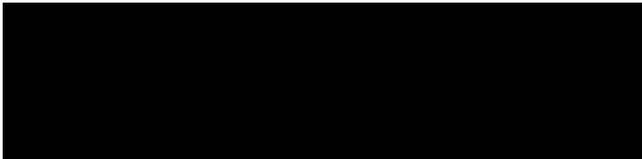




U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE: 
MSC 01 355 60923

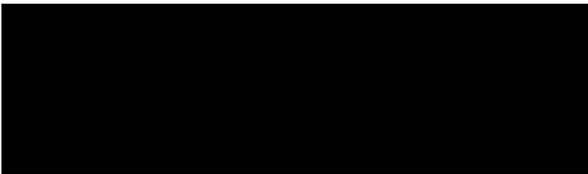
Office: NATIONAL BENEFITS CENTER

Date: MAY 29 2007

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. 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.

Robert P. Wiemann, Chief
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 affirmed.

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) Legalization Office in Los Angeles, California in 1993. The applicant submitted documentation in support of his appeal.

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. However, as of the date of this decision, neither the applicant nor counsel has submitted a statement, brief, or additional evidence to supplement the record. Therefore, the record must be considered complete.

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).

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 stated 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 to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible documentation to demonstrate that he filed a written claim for class membership in one of the legalization class-action lawsuits cited above before October 1, 2000. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed his Form I-485 LIFE Act application on September 20, 2001. The applicant provided photocopies of the following documents with his Form I-485 LIFE Act application:

- An undated 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,
- An undated "Form for Determination of Class Membership in *CSS v. Meese* or LULAC" that is signed by the applicant.
- A "Corroborative Affidavit" dated July 17, 1993 that is signed by both the applicant in which he claimed that he had previously submitted a legalization application under the *CSS* lawsuit based upon his absence from this country from September 5, 1987 to September 30, 1987.

The photocopied documents such as that the applicant provided with his Form I-485 LIFE Act application may be considered as evidence of having made a written claim for class membership, pursuant to 8 C.F.R. § 245a.14(d). However, the record contains no evidence that any of these documents was submitted to the Service or its successor CIS prior to the filing of his Form I-485 LIFE Act application on September 20, 2001.

While the applicant also submitted documentation relating to his claim of residence in the United States in that period from prior to January 1, 1982 to May 4, 1988, such documentation cannot be considered as evidence that the applicant filed a claim to class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

In response to the notice of intent to deny, the applicant submitted copies of the three documents cited above, as well as a photocopy of an appointment notice from the Service's Legalization Office in Los Angeles, California dated July 19, 1993 that bears the applicant's name, date of birth, and country of birth that purportedly scheduled him for an appointment to submit a Form I-687

application as a *CSS* or *LULAC* class member on March 18, 1994. While this appointment notice may be considered as evidence of having made a written claim for class membership, pursuant to 8 C.F.R. § 245a.14(d), the applicant offers no explanation as to *why*, if he truly had this letter since at least 1993, he did not submit this document with his Form I-485 LIFE Act application. Applicants were instructed to provide qualifying evidence *with* their applications and the applicant did include other supporting documentation with his LIFE Act application. A review of relevant records reveals no evidence that the applicant had a pre-existing file prior to filing of his Form I-485 LIFE Act application on September 20, 2001, in spite of the fact that he claims to have been issued the Service appointment notice relating to class membership in 1993. These factors raise serious questions regarding the authenticity and credibility of the supporting documentation, as well as the applicant's claim that he filed for class membership. Given these circumstances, it is concluded that photocopied documents provided by the applicant in support of his claim to class membership are of questionable probative value.

On appeal from the director's initial decision, the applicant repeated his claim that he had applied for membership in one of the requisite legalization class action lawsuits at the Service's Legalization Office in Los Angeles, California in 1993. The applicant included copies of previously submitted documentation as well as two new affidavits in support of his claim that he filed for class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

The applicant submitted an affidavit that is signed the applicant's wife [REDACTED]. The applicant's wife stated that she accompanied her husband when he unsuccessfully attempted to submit a Form I-687 application at the Service's Legalization Office on [REDACTED] in Los Angeles, California. However, the probative value of this affidavit is limited in that it has been executed by the applicant's wife, a family member with a direct interest in the outcome of these proceedings.

The applicant provided an affidavit signed by [REDACTED] who declared that on July 9, 1993, the applicant asked him for a ride to his appointment at the Service's Legalization Office on [REDACTED] in Los Angeles, California. Mr. [REDACTED] noted that he accompanied the applicant and his wife to this appointment and that the applicant was unsuccessful in his attempt to submit a Form I-687 application. However, as noted above, the appointment notice provided by the applicant in his response to the notice of intent to deny was dated July 19, 1993 and did not schedule him for his appointment with the Service until March 18, 1994. Neither the applicant nor Mr. [REDACTED] offered any explanation as to how the applicant was able to ask for a ride to an appointment on July 9, 1993 when the notice was not issued until July 19, 1993 and the appointment scheduled for March 18, 1994.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 *timely* filed a written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act. Therefore, the decision recommending denial of the LIFE Act application shall be affirmed.

ORDER: The certified decision recommending the denial of the application for permanent resident status is affirmed and the appeal is dismissed. This decision constitutes a final notice of eligibility.