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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 240 60842

Office: CLEVELAND

Date:

APR 02 2008

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 National Benefits Center. 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 director of the Cleveland District Office denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act and certified her decision to the Administrative Appeals Office (AAO). The AAO affirmed the director's decision. The AAO will reopen the case, sua sponte, and will not disturb the director's denial of the application.

The district director denied the application because the applicant failed to demonstrate that he filed a written claim for class membership in the *Catholic Social Services, Inc. (CSS)*, *League of United Latin American Citizens (LULUC)*, or *Zambrano* legalization class action lawsuits.

On appeal, counsel for the applicant contends that the district director failed to properly weigh the evidence.¹ Counsel asserts that the submitted evidence sufficiently meets the applicant's burden to establish his eligibility for adjustment of status. Counsel also asserts that the applicant violated his lawful status during the requisite period by failing to properly register for the minimum course load, accepting unauthorized employment, and enrolling in another university without explicit permission. Counsel submits a brief and additional evidence.

An applicant for permanent resident status under section 1104 of 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 one 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 Services v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 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 established that he filed a timely written claim for class membership. Here, the applicant has failed to meet this burden.

In the Notice of Intent to Deny (NOID), dated on or about March 4, 2004, the director stated that the evidence provided failed to establish that the applicant filed a timely written claim for class membership in one of the legalization class action lawsuits. The director granted the applicant thirty (30) days to submit additional evidence. In response to the NOID, counsel asserted that the applicant mailed a Notice to Join the CSS class action lawsuit to the Attorney General in a timely manner. Counsel provided a copy of the notice.

¹ The record reflects that the applicant submitted a Form G-28, Notice of Entry of appearance as Attorney or Representative, indicating change of counsel on March 6, 2008.

In a February 15, 2008, Notice of Certification (NOC), the director denied the instant application and certified the case to the Administrative Appeals Office for review. The director gave the applicant and previous counsel of record proper notice of the certification. The applicant had an opportunity to supplement the record within 30 days of notice of the certification. On certification, the AAO affirmed the director's decision denying the application. Subsequent to the AAO's decision, new counsel filed a brief and additional evidence. The AAO will reopen, sua sponte, to address counsel's brief and evidence as submission for certification.

In support of the applicant's claim, the record contains the following relevant evidence:

1. A Notice to Join Class Action, dated September 15, 2000, signed by the applicant. The Notice includes a certificate of service signed by the applicant. The applicant stated that the original and a copy were sent by regular U.S. mail, postage prepaid to the Attorney General on September 15, 2000.
2. A Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, signed by the applicant on May 24, 2004.
3. A notarized declaration by the applicant that he mailed the Notice to Join Class Action on September 15, 2000. The applicant stated that the mail was never returned.
4. A May 19, 2004, notarized declaration by [REDACTED], who stated that that the applicant called her in September 2000. The applicant stated that, during the course of the conversation, the applicant told her that he had mailed a notice to the Attorney General to join the class action CSS lawsuit.
5. A May 20, 2004, notarized declaration by [REDACTED], who stated that that the applicant told him in September 2000 that he filed papers to join a class action lawsuit for legalization under CSS.
6. A May 20, 2004, notarized declaration by [REDACTED], who stated that the applicant mentioned to him that he had applied to join a class action lawsuit for legalization under CSS in September 2000.
7. A May 21, 2004, notarized declaration by [REDACTED] who stated that the applicant called him in September 2000 and told him that he had applied to join a class action lawsuit for legalization under CSS.
8. A September 6, 2006, declaration by [REDACTED], director of International Student Services at Case Western Reserve University. Ms. [REDACTED] stated that the applicant was a graduate student in the Department of Macromolecular Science from 1980 to 1984. Ms. [REDACTED] stated that in the Fall semester of 1981 the applicant registered for one (1) credit hour as opposed to the proper registration of nine (9) credit hours. She

stated that this was a violation of his F-1 non-immigrant visa status. She further stated that, as required, the school reported all students who were improperly registered to the Immigration and Naturalization Service.

Counsel asserts that the above evidence is sufficient to establish that the applicant filed a written claim for class membership. In context of the regulation at 8 C.F.R. § 245a.14, documents that prove an alien filed a written claim for class membership consist of documents issued by the Service to the alien, most of which include the alien's name, A-number, and date. The document bearing a date-stamp by the Service serves as confirmation that the applicant filed a written claim for class membership.

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Here, the applicant failed to provide any Service documents which prove his claim for class membership was either received or filed. While the applicant's Notice to Join Class Action letter is relevant and has been considered, the letter provides minimal probative value. The Notice neither confirms the applicant's claim was filed nor does it serve as verification by the Service. The record does not include a receipt or any other document to establish receipt by CIS. The declarations by [REDACTED], and [REDACTED] are not based upon their own knowledge but rather what the applicant told them. The declarations are not based on the declarants' own experience and their testimony would be considered hearsay.

The Form I-687 Supplement, signed by the applicant in May 24, 2004, is insufficient to establish the applicant filed a written claim for class membership before October 1, 2000.

The applicant's own declaration is insufficient to meet his burden. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

In the absence of additional credible evidence, the applicant has failed to prove that he filed a timely written claim with the Attorney General for class membership in one of the legalization class action lawsuits.

Counsel also asserts that the applicant violated his lawful status during the requisite period by failing to properly register for the minimum course load, accepting unauthorized employment, and enrolling in another university without explicit permission. Counsel provided [REDACTED]'s declaration in support of his assertion. As the applicant has failed to establish a written claim for class membership, counsel's assertion that the applicant was in an unlawful status during the requisite period is moot.

Therefore, the applicant failed to establish a written claim for class membership under Section 1104(b) of the LIFE Act and 8 C.F.R. §245a.10.

Based on the above discussion, the applicant is ineligible for permanent resident status under Section 1104 of the LIFE Act. Accordingly, the AAO shall not disturb the director's denial of the application.

ORDER: The director's February 15, 2008, decision is affirmed. The application is denied.