

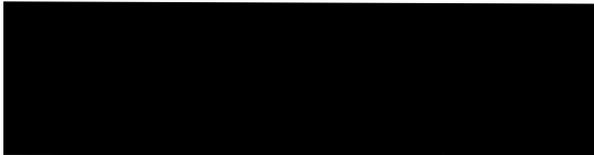
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 03 249 63176

Office: NATIONAL BENEFITS CENTER

Date: **APR 29 2008**

IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 the applicant had not established that either he or his mother, under whose application he seeks derivative status, 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, the applicant states that his mother filed for class membership on November 28, 1990, when she mailed her class membership declaration to the "LULAC office in California," and that he should not be penalized because Citizenship and Immigration Services (CIS) could not "locate her old file."

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 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*). In the alternative, an applicant may demonstrate that his or her spouse or parent filed a written claim for class membership in a legalization class-action lawsuit before October 1, 2000. *See* 8 C.F.R. § 245a.10.

In support of his application, the applicant submitted a copy of his mother's Form I-687, Application for Status as a Temporary Resident under section 245A of the Immigration and Nationality Act, purportedly signed on August 17, 1990; however, the date appears to have been altered. The applicant also submitted a copy of a legalization questionnaire, signed by his mother on September 20, 2000, and a LULAC class membership declaration signed by his mother and dated November 28, 1990. The applicant also submitted a copy of an undated appointment notice from the New York District Office and addressed to the applicant's mother, and a June 2, 2003, affidavit from his mother, in which she stated that when she first entered the United States, she left her children with her mother in Colombia, and that "someone" brought them through the border "around February 1988."

The director reviewed CIS records, but was unable to establish any record that the applicant's mother had filed a timely written claim to class membership. On March 10, 2004, the director issued a Notice of Intent to Deny, in which he advised the applicant that he must submit documentation to establish that either he or his mother applied for class membership prior to October 1, 2000. In response, the applicant submitted copies of previously submitted documentation. The director determined that the applicant had not established that either he or his mother had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000, and denied the application on August 3, 2004.

On appeal, the applicant reasserts his claim to eligibility under the LIFE Act. The applicant submits no new documentation in support of his appeal.

The applicant has submitted no evidence that his mother timely filed for membership in any of the required class action lawsuits. Neither the Form I-687 application, the legalization questionnaire, or the class membership declaration signed by his mother and dated November 28, 1990, contain any indication that it was received by the legacy Immigration and Naturalization Services (legacy INS). In addition to not being

dated, the appointment notice does not contain an alien registration number as required by 8 C.F.R. § 245a.14.

Accordingly, the record does not establish that either the applicant or his mother applied for class membership. Therefore, he cannot qualify for permanent residence under the LIFE Act.

Furthermore, 8 C.F.R. § 245a.11(b) requires each applicant to demonstrate that he or she entered the United States prior to January 1, 1982. The applicant submitted no documentation to establish that he entered the United States prior to January 1, 1982, and resided in an unlawful status from that date through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). In her June 2, 2003, affidavit, the applicant's mother stated that her children, of whom the applicant is the youngest, did not enter the United States until "around February 1988."

Given his inability to meet the requirements of continuous residence and continuous presence in the United States during the requisite period, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office does not identify all of the grounds for denial in the initial decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

The record reflects that on January 9, 2006, the applicant filed a Form I-687 application pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements). The record does not reflect that the director has issued a final decision regarding that application, and it is not at issue in this appeal.

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