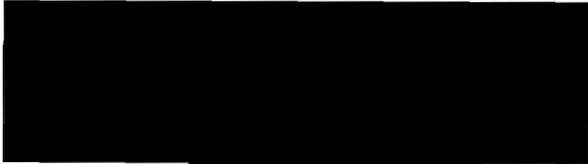


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Services

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FILE:



Office: NATIONAL BENEFITS CENTER

Date:

MAY 02 2008

MSC 02 318 60793

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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 Administration Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded the applicant had not established that she 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 claims that she 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 1990. The applicant submits two affidavits in support of this claim.

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*). 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).” 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. 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 she 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 her Form I-485 LIFE Act application on August 15, 2002. The applicant provided photocopies of the following documents with her Form I-485 LIFE Act application:

- 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 2, 1990; and,
- A “Form for Determination of Class Membership in *CSS v. Meese*” that is signed by the applicant and dated July 2, 1990.

The photocopied documents such as that the applicant provided with her 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 the applicant’s Form I-485 LIFE Act application on August 15, 2002.

While the applicant also submitted documentation relating to her 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 a photocopy of an appointment notice from the Service’s Legalization Office in Los Angeles, California dated July 20, 1995 that bears the applicant’s name, date of birth, and country of birth that purportedly scheduled her for an appointment to submit a Form I-687 application as a *CSS* or *LULAC* class member on October 21, 1996. 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 she truly had this letter since at least 1995, she did not submit this document with her 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 her Form I-485 LIFE Act application on August 15, 2002, in spite of the fact that she claims to have been issued the Service appointment notice relating to class membership in 1995. These factors raise serious questions regarding the authenticity and credibility of the supporting documentation, as well as the applicant’s claim that she filed for class membership. Given these circumstances, it is concluded that photocopied documents provided by the applicant in support of her claim to class membership are of questionable probative value.

On appeal, the applicant claims that she applied for membership in one of the requisite legalization class action lawsuits at the Service's Legalization Office in Los Angeles, California in 1990. The applicant includes two new affidavits in support of her claim that she filed for class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

The applicant provides an affidavit signed by [REDACTED] who states that she accompanied the applicant when she submitted a Form I-687 application and supporting documents at the Service's Legalization Office on Soto Street in Los Angeles, California in July 1990.

The applicant submits an affidavit that is signed by [REDACTED]. Ms. [REDACTED] declares that assisted the applicant in preparing a Form I-687 application in July 1990. Ms. [REDACTED] recalls that the applicant was extremely happy after she returned from filing the Form I-687 application at the Service's Legalization Office on Soto Street in Los Angeles, California.

However, as noted above, the appointment notice provided by the applicant in her response to the notice of intent to deny was dated July 20, 1995 and did not schedule her for an appointment with the Service until October 21, 1996. No explanation has been advanced by the applicant or either of the two affiants cited above as to why the Service would issue an appointment notice dated July 20, 1995 that purportedly scheduled her for an appointment to file a Form I-687 application as a *CSS* or *LULAC* class member on October 21, 1996, if she had previously submitted a Form I-687 application to the Service in July 1990 as claimed.

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 her 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 her failure to document that she *timely* filed a 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 ineligibility.