



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER

Date **JUN 14 2004**

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:

[REDACTED]

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Administrative Appeals Office (AAO). The application was denied again by the Director, National Benefits Center, and this decision was certified for review by the AAO. The decision shall be reversed and the appeal will be sustained.

The service center 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 this initial denial, counsel reiterated the claim that the applicant had previously filed for class membership. Counsel submitted documentation in support of the appeal.

Upon review, the AAO determined that the service center director's decision lacked specificity in concluding that the applicant had not submitted sufficient evidence to establish that he had applied for class membership. Consequently, the AAO remanded the matter for a new decision. The record shows that counsel has subsequently submitted additional material to supplement the appeal. Therefore, this material shall be incorporated into the applicant's appeal.

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 his is LIFE Act application, the applicant submitted a photocopy of the following document reflecting that he attempted to file an application for temporary residence (legalization) under section 245A of the Immigration and Nationality Act (INA), with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Service, or CIS):

- an appointment notice dated April 2, 1991, from the Service's Legalization Office in Houston, Texas, which bears the applicant's name, date of birth, and address, and scheduled him for an interview at 8:00 A.M. on September 26, 1991, regarding the late filing of a legalization application under either the CSS or LULAC case.

In the certified decision that denied the application for a second time, the benefits center director noted that a review of the relevant records failed to demonstrate any evidence that the appointment notice had been issued to the applicant or that he had appeared for such an interview and made a claim to class membership. However, the benefits center director did not establish that the information in the appointment notice was inconsistent with the claims made on the application or that such information was false. If the benefits center

director had questions regarding the credibility of the supporting document provided by the applicant, he could have requested that the original of the photocopied document be submitted. 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 supporting document is a relevant document 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 supports the assertion that the applicant put forth a claim to class membership and that he was scheduled to appear for an interview regarding either *CSS* or *LULAC* class membership at 8:00 A.M. on September 26, 1991, at the Service's Houston, Texas legalization office. 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 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.