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

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[redacted]

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: AUG 02 2006

MSC 03 239 63044

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. All documents have been returned to the office that originally decided your case. 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.

Marie Johnson

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 sustained.

The director concluded that the applicant had not established that he had submitted a written application for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. Thus, the director denied the application.

On appeal, the applicant submits a notarized, sworn statement in which he indicates that he did present a timely, written application for class membership in one of the requisite legalization class-action lawsuits. He also resubmits a copy of an Immigration and Naturalization Service (INS) CSS/LULAC appointment notice for February 18, 1994.

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(g).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States, and is otherwise eligible for adjustment of status under this section. 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 states 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Here, the submitted evidence regarding the applicant's claim that he applied for class membership prior to October 1, 2000 is relevant, probative and credible.

With his Form I-485 LIFE Act application, the applicant included:

- An INS CSS/LULAC appointment notice for February 18, 1994, stamped received by the INS Legalization Center;
- The Form I-687, Application for Status as a Temporary Resident, which the applicant signed and dated on January 27, 1993; and,
- The Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)* which the applicant signed and dated on January 30, 1993.

According to 8 C.F.R. § 245a.14, such documents as these may be furnished in an effort to establish that an alien had applied for class membership.

In the notice of intent to deny (NOID), however, the director indicated that the INS CSS/LULAC appointment notice was not probative in that it failed to list an A-number for the applicant as required at 8 C.F.R. § 245a.14(d).[1] He also held the authenticity of the supporting documents that the applicant submitted in doubt because he could find no record that the Service sent the applicant an appointment notice in 1994. He stated further that a search of Service records and indices failed to provide evidence that the applicant had submitted any documents to the Service prior to the filing of his Form I-485 LIFE Act application on May 27, 2003.

In response to the NOID, the applicant submitted a written statement that asserts that he did submit a timely, written application for class membership.

In the notice of decision, the director denied the application for the reasons set out in the NOID.

On appeal, the applicant reasserts that he has provided credible evidence to having made a timely, written claim to class membership. He resubmits a copy of the INS CSS/LULAC appointment notice.

In *Matter of E-M-*, 20 I&N Dec. at 81, the Commissioner indicated that when an applicant's supporting document does not fully comply with requirements set out in the regulations, such as when employers fail to sign a certain supporting document under penalty of perjury, the document might still be accorded evidentiary weight as a "relevant document." Such documents, however,

[1] In the NOID, the director indicated that the regulation which lists an A-number requirement for various Service documents, such as class member appointment notices, is found at 8 C.F.R. § 245.14(b). This regulation is, in fact, found at 8 C.F.R. § 245a.14(d).

would not be accorded as much weight as those documents in strict compliance with the regulations. *See Id.*, 8 C.F.R. § 245a.14(g) and 8 C.F.R. § 245a.2(d)(3)(i).

Thus, while the INS CSS/LULAC interview notice submitted by the applicant does not include an A-number, as required at 8 C.F.R. § 245a.14(d), it may be evaluated as a relevant document.

This notice may be accorded significant probative value as it was stamped as received by the INS Legalization Center and an immigration officer apparently wrote in by hand the applicant's address, name and date of birth on the notice. Further, the information on the February 18, 1994 CSS/LULAC appointment notice is consistent with written statements submitted by the applicant and consistent with information on other evidence in the record, such as the late January 1993 signature dates on the Form I-687 and the Form for Determination of Class Membership in *CSS v. Thornburgh (Meese).*

Finally, no evidence in the record contradicts the information on the INS CSS/LULAC appointment notice, the Form I-687 or the Form for Determination of Class Membership in *CSS v. Thornburgh (Meese).*

Accordingly, it is more likely than not that the applicant did present a timely, written claim to CSS/LULAC class membership, and the applicant has overcome the particular basis of denial cited by the director.

It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1104 of the LIFE Act. Thus, the matter will be forwarded to the appropriate district office for interview and further processing of the LIFE Act application.

ORDER: The appeal is sustained. The director shall forward this matter to the proper district office so that the adjudication of the application for permanent residence might be completed.