



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

FILE:

[REDACTED]
MSC 03 239 62981

Office: NATIONAL BENEFITS CENTER

Date:

MAR 29 2006

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 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.

Mark Johnson

S Robert P. Wiemann, Director
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 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, counsel asserts that the applicant has submitted evidence to demonstrate that he applied for class membership with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) in a timely manner. Counsel indicates that the fact that the applicant was not assigned an Administrative file or A-file number does not preclude that he applied for class membership.

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 the Form I-485 LIFE Act application, the applicant submitted the following documents in an attempt to establish a claim to class membership:

- A photocopied 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 January 20, 1988.
- A photocopied "Form for Determination of Class Membership in *CSS v. Meese* or *LULAC*" that is signed by the applicant and dated May 18, 1991.
- A photocopied Form I-797, Receipt Notice, from the Service's Vermont Service Center that is dated November 18, 1991 and acknowledged receipt of a Form I-687 legalization application and a Form I-690, Application for Waiver of Grounds of Inadmissibility under Section 245A of the Act, from the applicant.

- A photocopy of a Legalization Questionnaire that is signed by the applicant and dated September 14, 1999.

The record shows that 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 New York, New York, dated December 15, 1992 and bearing the applicant's name, date of birth, and country of birth, which scheduled him for an interview before noon on July 16, 1993, regarding the late filing of a legalization application under the CSS/LULAC cases.

Although the director seemingly took issue with the credibility of the applicant's claim to have applied for class membership and the documentation submitted in support of that claim, the record contains no evidence to demonstrate that any effort was undertaken to verify the authenticity of the supporting documents. In addition, the director failed to establish that the information in these documents was inconsistent with the claims made by the applicant or that such information was false. If the director had questions regarding the credibility of the supporting documents provided by the applicant, a request should have been issued to him to provide the originals of the photocopied documents. 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 proof submitted by the applicant has to establish only that the assertion or asserted claim is probably true. Clearly, the Service documents cited above are relevant documents under 8 C.F.R. § 245a.14. As such, the applicant's claim that he applied for class membership must be considered in light of such testimony and evidence.

The independent and contemporaneous evidence contained in the record tends to support the assertion that the applicant put forth a claim to class membership prior to October 1, 2000. 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.