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: SEP 11

MSC 02 142 61104

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. 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.

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. The director certified the matter to the Administrative Appeals Office (AAO) for review. The decision will be affirmed.

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

The applicant did not file a brief or other evidence with the AAO during the 33 days following the date of the director's June 29, 2005 denial.

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 at 8 C.F.R. § 245a.14 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. Most notably, the regulations at 8 C.F.R. § 245a.14(d) indicate that such forms of evidence include Service documents addressed to the alien, or his or her representative, that discuss matters relating to the class membership application and that include the date as well as the alien's name and A-number. Those regulations also permit the submission of "[a]ny other relevant document(s)." *See* 8 C.F.R. § 245a.14(g). Where the submitted document is not in strict compliance with the regulations in that it does not include an A-number, such evidence will be evaluated as a "relevant document" under 8 C.F.R. § 245a.14(g). *See Matter of E-M-*, 20 I&N Dec. 77, 81 (Comm. 1989)(where the Commissioner determined that when an applicant for original legalization submits a supporting document which is not in full compliance with the regulation specific to that document, the document should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L).)

The record includes the following documents which potentially relate to a timely, written request for class membership:

1. A document which purports to be a "Late Filing of *LULAC* or *CSS* Application" appointment notice issued by the U. S. Immigration and Naturalization Service on May 16, 1991 which requests that the applicant appear for an interview on October 17, 1991.

2. The Form I-687, Application for Status as a Temporary Resident, unsigned and dated October 21, 1991.

3. The Form I-687, Application for Status as a Temporary Resident, signed by the applicant and dated August 20, 1994.

4. The Form for Determination of Class Membership in *CSS v. Reno* signed by the applicant and dated August 20, 1994.

5. Legalization Front-Desking Questionnaire dated August 29, 2000 and stamped received on January 30, 2001 by the Director, Vermont Service Center.

6. A February 7, 2002 letter to the applicant from the Director, Vermont Service Center, indicating that the applicant failed to demonstrate that she had attempted to file for legalization during the original filing period, but had that application rejected.

7. An October 21, 1994 response to a Freedom of Information / Privacy Act (FOIA) request for copies of Immigration and Naturalization Service (INS) records for the applicant, addressed to the attorney who represented the applicant when she filed for Temporary Protected Status. This response from the Houston District Office indicates that no INS records could be found for the applicant.

8. A January 24, 1995 response to an appeal of #7 above which indicates that the request for copies of the applicant's INS records would be remanded from the U.S. Office of Information and Policy, Washington, D.C., to the Houston District Office.

9. A February 1, 1995 letter in which the Houston District Director explained that the additional search for INS records for the applicant that was carried out in accordance with the U.S. Office of Information and Policy remand referred to in #8 above also yielded no records for the applicant.

On February 15, 2002, the applicant submitted the Form I-485, Application to Register Permanent Resident or Adjust Status.

On May 29, 2002, the director issued a notice of intent to deny (NOID) in which he stated that the applicant had failed to establish that she had submitted a timely, written application for class membership in one of the requisite legalization class-action lawsuits. In the NOID, the director did not evaluate any of the evidence which the applicant provided relating to a timely, written application for class membership.

In response to the NOID, the applicant submitted a statement which asserts that the Legalization Front-Desking Questionnaire dated August 29, 2000 does establish that she submitted a timely, written claim for class membership.

On September 9, 2002, the director denied the application for the reasons set out in the NOID. In the denial, the director again did not specify what he found lacking in the applicant's evidence.

On appeal from the September 9, 2002 decision, the applicant asserted that the Form I-687 filed on October 17, 1991 and the Legalization Front-Desking Questionnaire dated August 29, 2000 establish

that she submitted a timely, written claim for class membership. She also indicated that the letters which refer to the FOIA request substantiate that she contacted the Service to obtain copies of records relating to the denial of her 1991 application for class-membership and that this in turn also serves to substantiate that she submitted a timely, written claim for class membership.

The September 9, 2002 notice of decision was withdrawn. The AAO remanded the matter to the Director, National Benefits Center, instructing that office to provide the applicant a notice of decision which identified any deficiencies in the evidence and which documented the director's efforts to check Service records for evidence that the applicant applied for class membership such that the applicant might be able to provide a meaningful appeal. *See* 8 C.F.R. § 245a.20(a)(2).

On June 29, 2005, the director denied the application and certified his decision to the AAO. In the decision, he identified deficiencies in the applicant's evidence and specified that all Service records and indices indicated that, prior to October 1, 2000, the applicant had not filed any documents with the Service that pertained to the original legalization program or to LIFE legalization.

The director also indicated in his decision that the "Late Filing of *LULAC* or *CSS* Application" appointment notice which the applicant claimed the Service had issued to her in connection with a timely, written application for class membership would not be considered probative evidence because the notice does not include an A-number for the applicant as required at 8 CFR § 245a.14(d). This point in the director's decision is withdrawn. Where such notices do not include an A-number in compliance with 8 CFR § 245a.14(d), they will be evaluated as "other relevant document(s)" pursuant to 8 CFR § 245a.14(g). *See Matter of E-M-*, 20 I&N Dec. 77, 81 (Comm. 1989).

Further, the director stated in his decision that the authenticity of the applicant's evidence was called into question based on its similarity to questionable evidence provided by several other LIFE legalization applicants who either currently reside or formerly resided in the Houston area. This point in the director's decision is withdrawn. Each application is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the Service is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record of proceeding in this instance consists of the material in the applicant's A-file. *See* 8 C.F.R. § 103.8(d). Further, if the decision will be adverse to the applicant and is based on derogatory information considered by the Service of which the applicant is unaware, she shall be advised of this and offered an opportunity to rebut the information and present evidence in her own behalf before the decision is rendered. *See* 8 C.F.R. § 103.2(b)(16)(i). The applicant's A-file does not contain specific information or evidence relating to other questionable or fraudulent applications from aliens in the Houston area, nor does it include evidence that the applicant was ever provided notice of any such derogatory information.

The Form I-687 may be furnished in an effort to establish that an alien filed a timely, written claim for class membership. However, it is only the Form I-687 filed in conjunction with the class membership application which supports such a claim. *See* 8 C.F.R. § 245a.14(d)(6).

The applicant has provided no credible evidence to establish that the Form I-687 dated October 21, 1991 was filed with the Service in conjunction with an application for class membership in one of the requisite legalization class-action lawsuits or even that it was filed with the Service at all.

The applicant indicated on appeal that the copy of the Form I-687 which is unsigned and dated October 21, 1991 serves to corroborate her claim that she submitted this form to the Service on October 17, 1991 at her "Late Filing of LULAC or CSS Application" appointment.[1] However, this assertion and the authenticity of the applicant's Form I-687 and "Late Filing of LULAC or CSS Application" appointment notice are called into question in that the Form I-687 is dated four days after October 17, 1991 and it is not signed.

Also, the applicant's claims that the Service issued her a "Late Filing of LULAC or CSS Application" October 17, 1991 appointment notice and that she submitted the Form I-687 at that appointment are called further into question in that on her Form I-687 dated August 20, 1994 at Part 14, the applicant indicated that she never applied for temporary residence prior to August 1994 and at Part 15 she indicated that she has no previous records with the Service.

Further, the authenticity of the Form I-687 dated October 21, 1991 is called further into question in that it contains information that contradicts other documents in the record. This form specifies that the applicant entered the United States during December 1981; whereas the Form I-687 dated August 20, 1994 specifies that the applicant first entered the United States during August 1981. The Form I-687 dated August 20, 1994 and the Form for Determination of Class Membership in *CSS v. Reno* dated August 20, 1994 indicate that the applicant left the United States briefly in 1987 to visit Mexico. Yet, the Form I-687 dated October 21, 1991 specifies that the applicant left the United States briefly in 1987 to visit Honduras.

In sum, the applicant's claims that she attended an October 17, 1991 "Late Filing of LULAC or CSS Application" appointment and that she submitted the Form I-687 dated October 21, 1991 at that appointment are not credible. In turn, the Form I-687 dated October 21, 1991 and the "Late Filing of LULAC or CSS Application" October 17, 1991 appointment notice are not probative evidence of the applicant's claim of having submitted a timely, written request for class membership.

The applicant indicated on appeal that she filled in the Form I-687 dated August 20, 1994 and the Form for Determination of Class Membership in *CSS v. Reno* dated August 20, 1994 because the Service notified her in 1994 that she would be re-interviewed regarding her request for class-membership which was denied following her October 17, 1991 interview. Yet, she did not provide any 1994 notice from the Service or other documentation to support this claim. Also the applicant's

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[1] In the denial dated June 29, 2005, the Director indicated that the applicant had stated on appeal that she filed the Form I-687 dated August 20, 1994 and the Form for Determination of Class Membership in *CSS v. Reno* dated August 20, 1994 with the Service. This is not correct. The applicant specified on appeal that she only submitted one Form I-687 with the Service and that she did so on October 17, 1991. She indicated that she only prepared the forms dated August 20, 1994 to file with the Service at a re-interview that was scheduled subsequent to the denial of her 1991 class membership request, but she never did file the forms because the Service suspended these re-interviews.

claims that she submitted a request for class membership in 1991 and attended an October 17, 1991 "Late Filing of LULAC and CSS Application" interview are not credible. In turn, her claims that the Service denied this request for class membership and later notified her that she would be re-interviewed regarding this request are not credible. Thus, her claims that she filled in the Form I-687 dated August 20, 1994 and the Form for Determination of Class Membership in *CSS v. Reno* dated August 20, 1994 in response to a Service notice that her 1991 request for class-membership would be re-adjudicated are not credible.

Further, the applicant failed to submit copies of these forms dated August 20, 1994 or to assert that the Service notified her that she would be re-interviewed in 1994, both when filing the Form I-485 and when responding to the NOID. This calls the authenticity of these forms further into question. In addition, these forms both indicate that the applicant left the United States briefly in 1987 to visit family in Mexico. Yet, this contradicts other evidence in the record which indicates that the applicant's entire family is in Honduras and that when the applicant left the United States in 1987, she visited Honduras. Also, the Form I-687 dated August 20, 1994 indicates that the applicant began working as a housekeeper for [redacted] during August 1981. Yet, [redacted] stated in her affidavit dated February 15, 2002 that she first met the applicant during June 1987 and the Form I-687 dated October 21, 1991 specifies that the applicant did not enter the United States until December 1981. Thus, the Form I-687 dated August 20, 1994 and the Form for Determination of Class Membership in *CSS v. Reno* dated August 20, 1994 are not credible documents and do not provide probative evidence regarding the applicant's claim that she filed a timely, written application for class membership.

The applicant indicated that the 1994 and 1995 letters regarding the FOIA request for copies of the applicant's INS records relate to a FOIA request her attorney filed to gain information on why her claim to class-membership filed in 1991 was denied. However, these letters do not specify that they were filed to obtain information on the claimed 1991 class membership application and as the applicant's underlying claim that she submitted a request for class membership during 1991 is not credible, this assertion regarding the purpose of the 1994 FOIA request filed on her behalf is not credible. Thus, while these letters do appear to be documents issued by the Service, they do not provide relevant, probative evidence regarding the applicant's claim that she filed a timely, written application for class membership.

Finally, the record demonstrates that the Legalization Front-Desking Questionnaire dated August 29, 2000 was not received by the Vermont Service Center until January 30, 2001, which is after the statutory deadline for filing applications for class membership. Further, this questionnaire does not relate to an application for class membership in one of the requisite legalization class-action lawsuits. Likewise, the February 7, 2002 response from the Director, Vermont Service Center, indicating that the applicant failed to demonstrate that she had attempted to file for legalization during the original filing period, but had that application rejected, does not relate to an application for class membership. Thus, these documents do not provide relevant, probative evidence in support of the applicant's claim that she filed a timely, written application for class membership.

The applicant has failed to submit documentation which establishes that she filed a timely, written claim for class membership in one of the requisite 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 filed a timely written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

ORDER: The director's decision dated June 29, 2005 is affirmed. The application is denied..