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U.S. Citizenship
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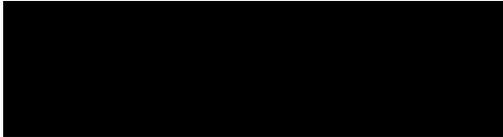
Office: Baltimore

Date:

IN RE: Applicant: [Redacted]

PETITION: 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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under section 1104 of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the counsel asserts that the applicant applied for Family Unity Benefits as a derivative applicant on the basis her husband's eligibility to adjust to permanent residence under section 1104 of the LIFE Act.

An applicant for permanent resident status under section 1104 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. In the alternative, an applicant may demonstrate that his or her spouse or parent filed a written claim for class membership before October 1, 2000. However, the applicant must establish that the family relationship existed at the time the spouse or parent initially attempted to apply for temporary residence (legalization) in the period of May 5, 1987 to May 4, 1988. See 8 C.F.R. § 245a.10.

The applicant neither claimed nor documented that she filed a timely claim for class membership in any of the aforementioned legalization class-action lawsuits with his initial LIFE Act application. Rather, the applicant indicated that she is applying as a derivative applicant based upon her husband having filed a claim for class membership in one of the requisite legalization class-action lawsuits. A review of the Administrative file of [REDACTED] file, [REDACTED] belonging to the applicant's husband shows that he is in fact a class member in one of the requisite legalization lawsuits cited above. The record shows that the applicant and her husband were married on March 23, 1988. Therefore, it is conceivable that the family relationship between the applicant and her husband existed at the time her spouse initially attempted to apply for legalization in the period of May 5, 1987 to May 4, 1988. As such, the applicant can claim class membership as a derivative alien pursuant to 8 C.F.R. § 245a.10.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

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. 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. See *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

A review of the record reveals the applicant submitted her Form I-485 LIFE Act application on May 21, 2002. On the Form I-485 LIFE Act application and throughout these proceedings, the applicant has claimed that she first entered the United States in September 1988. Therefore, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under 8 C.F.R. § 245a.11(b).

On appeal, counsel maintains that the applicant is eligible under a different part, section 1504 of the LIFE Act, Application of Family Unity Provisions to Spouses and Unmarried Children of Certain Life Act Beneficiaries. Counsel claims that the applicant previously submitted a Form 817, Application for Family Unity Benefits, and provides a photocopy of the Form I-817 application.

Pursuant to 8 C.F.R. § 245a.31, an alien currently in the United States may obtain Family Unity Benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

- (a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;
- (b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and
- (c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485 pursuant to Subpart B.

According to counsel, the applicant qualifies under section 1504 of the LIFE Act because she entered the United States in September 1988 and has been residing continuously in the United States since that date. Counsel correctly argues that under the aforementioned section and regulations, the applicant only has to establish that he or she entered the United States before December 1, 1988 and resided in this country since that date. However, obtaining benefits under section 1504 of the LIFE Act is a separate and distinct procedure from obtaining benefits under section 1104 of the LIFE Act. While counsel provides a photocopy of what he claims is a previously filed Form I-817 application that was submitted on the applicant's behalf, a review of the both the administrative and electronic record reveals no evidence that the Form I-817 application was ever filed with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS).

Under section 1504, the benefit sought is protection from removal. Under section 1104, the benefit sought is permanent residence. As discussed above, under section 1504, the eligibility of a spouse or child is determined by the derivative applicant having entered the United States prior to December 1, 1988, and maintaining residence from that date. However, under section 1104, the eligibility of the spouse or child is determined by the derivative applicant meeting the same eligibility specifications, including continuous residence in the United States from prior to January 1, 1982 to May 1, 1988, as required of the principal applicant.

The application for permanent residence under section 1104 cannot be approved for the reasons stated above. This is the only application that is before this office on appeal. If an applicant were to file a separate application for Family Unity and receive a denial of that application, there is no appeal of that denial.

Given her inability to meet the requirements, 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.