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U.S. Citizenship
and Immigration
Services

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JAN 21 2008

FILE:



Office: NATIONAL BENEFITS CENTER

Date:

MSC-02-352-60450

IN RE:

Applicant:



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. Any further inquiry must be made to that office.

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, reopened, and denied again by said Director. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director initially 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 the initial Notice of Decision, the applicant puts forth a brief disputing the director's decision. The applicant asserts that the decision was not based upon reasonable, substantial and probative evidence. The applicant requests oral argument.

The director, in denying the application again, concluded that 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. The director also concluded that the applicant was inadmissible under section 212(a) of the Immigration and Nationality Act (the Act) due his felony drug conviction.

The applicant has neither addressed the subsequent decision nor provided any evidence to overcome the director's findings.

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 applicant has presented numerous documents in an effort to establish his continuous residence and physical presence in the United States since before January 1, 1982 through May 4, 1988. However, none of the documents establish that the applicant filed a timely written claim for class membership prior to October 1, 2000.

On appeal, the applicant requested oral argument pursuant to 8C.F.R. § 3.1(e). It is noted that that section of the regulations relates to appeals filed with the Board of Immigration Appeals. The current appeal is properly filed with the Administrative Appeals Office (AAO). The regulation at 8 C.F.R. § 103.3(b), which relates to appeals filed with the AAO, provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a

misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals that on March 30, 1990, the applicant was arrested by the Hillside Township Police Department in Union, New Jersey for resisting an officer, possession of cocaine, possession of marijuana, and possession of a weapon. On July 12, 1991, the applicant was convicted of resisting an officer and possession of marijuana, both felonies. The dispositions of the remaining offense are unknown. Indictment # I1615-90.

The record also reveals that on December 8, 1993, the applicant was arrested by Police Department in Irvington, New Jersey for resisting arrest and assault on a police officer. On March 23, 1994, the applicant was convicted of resisting arrest, a misdemeanor. The remaining offense was dismissed. Case no. W010885.

A Notice of Intent to Deny was issued on January 5, 2004 in order to provide the applicant the opportunity to submit evidence to overcome the director's findings. The applicant, however, failed to respond to the notice.

Given the applicant's failure to even claim, much less document, that he filed a timely written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act. The applicant is also ineligible for the benefit being sought because of his two felony convictions. 8 C.F.R. § 245a.11(1). In addition, because the applicant was convicted of a crime involving a controlled substance, he is inadmissible under section 212 (a)(2)(A)(i)(II) of the Act. 8 C.F.R. § 245a.18(a).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.