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

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FILE:

MSC 02 142 62256

Office: NATIONAL BENEFITS CENTER

Date: OCT 11 2006

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. 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 initially denied by the Director, National Benefits Center, and appealed to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the matter to the director for further action. The director again denied the application and certified his decision to the AAO for review. The director's certified decision will be affirmed.

In his certified decision, the director concluded that the applicant had not established that he 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 28, 2005 certified 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. 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. The Form I-687 signed by the applicant and dated December 1, 1987.
2. A Legalization Questionnaire signed by the applicant and dated March 21, 2000.
3. An affidavit signed by the applicant that is not dated regarding the applicant's CSS/LULAC class membership application.
4. An Immigration and Naturalization Service (INS) information sheet for CSS class members that is not addressed to the applicant or to any specific party on which the applicant or an individual acting on his behalf has handwritten a note which suggests that the applicant has been waiting since March 21, 2000 for information relating to his application for CSS class

membership. The information sheet, apparently including the handwritten note, was stamped received by the Vermont Service Center on March 22, 2002.

5. A copy of the Form I-797, Notice of Action, dated March 25, 2002 that informs the applicant that the Vermont Service Center is precluded from accepting his Legalization Questionnaire because he filed it after the February 2001 deadline.¹ On the Form I-797 an individual acting on the applicant's behalf has handwritten a note which indicates: that the applicant filed the Legalization Questionnaire on March 21, 2000 with an INS office in Washington, D.C.; that subsequent to that, the Vermont Service Center gained jurisdiction over the processing of these questionnaires; and that, consequently, an inquiry was made regarding this questionnaire after February 2001 with the Vermont Service Center.

On February 19, 2002, the applicant filed this Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act.

On July 15, 2002, the director issued a notice of intent to deny (NOID) in which he stated that the applicant had failed to establish that he 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 that potentially relates to a timely, written application for class membership.

On July 26, 2002, the Service received a rebuttal to the NOID which included documents in support of the claim that the applicant filed a written application for legalization class membership prior to October 1, 2000.

On September 5, 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 5, 2002 decision, the assertion was made that the applicant had submitted a timely, written application for legalization class membership to the INS office in Washington, D.C. during March 2000. A copy of a Legalization Questionnaire dated March 21, 2000 was resubmitted on appeal.

The September 5, 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).

¹ The Vermont Service Center allowed aliens to file Legalization Questionnaires that they might be evaluated for eligibility to submit the Form I-687 after the original filing period. Such filings did not relate to an application for legalization class membership. The Vermont Service Center deadline to file requests to be evaluated for eligibility to submit the Form I-687 after the original filing period was in February 2001.

On June 28, 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 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 December 1, 1987 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 purportedly completed and signed the Form I-687 on December 1, 1987. The applicant also claimed on the Legalization Questionnaire dated March 21, 2000 that he attempted to file this Form I-687 on December 2, 1987 at the INS office located at [REDACTED] Park, Illinois. The responses on the applicant's undated affidavit also specify that the applicant attempted to file this Form I-687 on December 2, 1987. Yet, the Form I-687 includes information that relates to events that occurred after December 1987. That is, the Form I-687 at part 36 indicates that the applicant left his position with Landscape Maintenance on February 24, 1989 and that he began working for Yes We Care Landscaping, Inc. during March 1989. Such inconsistencies call the authenticity of the Form I-687, the Legalization Questionnaire dated March 21, 2000 and the applicant's undated affidavit into question.

Also the applicant lists [REDACTED] as his current address on the Legalization Questionnaire dated March 21, 2000. Yet, on the Form G-325A, Biographic Information, submitted with the Form I-485, the applicant specified that he did not move to [REDACTED] until November 2001. The letter from the Head Secretary, Washington Elementary School, Evanston, Illinois dated January 2001 indicates that the applicant, his wife and his children, who attended Washington Elementary School from Kindergarten through fifth grade, resided continuously at [REDACTED] during the years which preceded 2001 and through January 2001. The February 2001 letter from the applicant's pastor, the February 2001 Internal Revenue Service letter to the applicant, the Form I-687 and more than a dozen affidavits in the record dated February 2001 that attest to the applicant's continuous residence in the United States all tend to corroborate that the applicant and his family continued to live at [REDACTED] through at least February 2001. This calls the authenticity of the Legalization Questionnaire and the credibility of the applicant's claim that he submitted this document during March 2000 in conjunction with a timely, written application for legalization class membership further into question.

Consequently, the Form I-687, the Legalization Questionnaire dated March 21, 2000 and the applicant's undated affidavit regarding his CSS/LULAC class membership application do not constitute probative evidence that the applicant submitted a timely, written request for class membership.

On appeal, the applicant also indicated that, during March 2000, he filed the Legalization Questionnaire dated March 21, 2000 in conjunction with a written claim for class membership at the INS Office in Washington, D.C. However, the credibility of this assertion is called into question as it has been demonstrated that the Legalization Questionnaire dated March 21, 2000 is not authentic. Thus, the applicant's assertion that he submitted this Legalization Questionnaire to an INS office during March 2000 does not constitute probative evidence that the applicant submitted a timely, written request for legalization class membership.

For the same reasons, the handwritten note on the INS information sheet for CSS class members, stamped received by the Vermont Service Center on March 22, 2002, which suggests that the applicant has been waiting since he filed his Legalization Questionnaire dated March 21, 2000 for information relating to his application for CSS class membership does not constitute probative evidence that the applicant submitted a timely, written request for class membership.

Finally, the copy of the Form I-797 that informs the applicant that the Vermont Service Center cannot accept his Legalization Questionnaire filed after February 2001 does not constitute evidence of a timely, written application for class membership. This notice relates to an attempt to file an application that is separate from a legalization class membership application and it relates to an application filed after October 1, 2000. Also the handwritten note on the Form I-797 which indicates that, during March 2000, the applicant filed the Legalization Questionnaire dated March 21, 2000 with the Service in Washington, D.C. in conjunction with an application for class membership does not constitute probative evidence that the applicant filed a timely, written request for class membership because it has been demonstrated that the Legalization Questionnaire dated March 21, 2000 is not authentic.

The applicant has failed to submit documentation which establishes that he 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 his failure to 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.

It is also noted that the Evanston Police Department arrested the applicant on or about April 28, 1992 and charged him with retail theft. The applicant used the name [REDACTED] at the time of the arrest. The applicant was also charged with violating immigration laws and placed in deportation proceedings during June 1985. The Immigration Judge (IJ) granted him voluntary departure on July 25, 1985 under the name [REDACTED]. In accordance with the IJ order, the applicant presented himself to the U.S. Consulate in Mexico City on December 9, 1985 and displayed a Mexican passport bearing the name [REDACTED].

ORDER: The director's certified decision dated June 28, 2005 is affirmed. The application is denied.