



U.S. Citizenship
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FILE: 
MSC 02 320 61244

Office: NATIONAL BENEFITS CENTER

Date: **MAY 22 2007**

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, 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, the applicant asserted that he has been attempting to obtain permanent residency for the past 20 years. The applicant provided a copy of a Form I-797C, Notice of Action, which relates to his Form I-698 application along with documentation establishing he had provided a change of address prior to the issuance of the Notice of Decision. The applicant asserted that a brief and/or evidence would be submitted within 30 days. To date, however, no additional correspondence has been presented by the applicant.

The regulation at 8 C.F.R. § 245a.18(a)(1) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status.

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 record reveals that the applicant timely filed a Form I-687, Application for Temporary Resident Status under section 245A of the Immigration and Nationality Act (the Act) on May 3, 1988. The applicant was interviewed on October 4, 1988 and said application was approved on January 23, 1989. The applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Resident on March 14, 1996. On July 23, 1996, a Notice of Decision¹ was issued because the applicant had failed to file the Form I-698 application within the required 43-month application period.

The legalization class-action lawsuits mentioned above relate to aliens who claim they did not file applications in the 1987-1988 period because they were improperly dissuaded by the legacy Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS). A previously filed Form I-687 application that was accepted and subsequently approved of legalization benefits by the legacy INS, does not constitute a timely written claim to class membership. The applicant provided no explanation as to why he would have sought membership in the legalization class-action lawsuits as he had not been improperly dissuaded by the legacy INS and did file a timely application on May 3, 1988. Section 1104 of the LIFE Act contains no provision allowing for the reopening and reconsideration of the matter, as the original application for temporary resident status under section 245A of the Act had been filed by the applicant in a timely manner.

¹ The director inadvertently listed the decision as a Notice of Intent to Deny.

Given his 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The FBI report dated September 14, 2002, revealed the following offenses:

1. On July 26, 1986, the applicant was arrested by the Irvington Police Department in New Jersey for possession of stolen property – license plates, a violation of SS2C:20-3B. On March 2, 1987, the applicant was convicted of this offense and fined.
2. On August 25, 1992, the applicant was arrested for felony aggravated assault by the Miramar Police Department in Broward County, Florida. On September 14, 1992, the Broward County Circuit Court in Florida dismissed the charge. Case no. [REDACTED]
3. On November 14, 1992, the applicant was arrested by the Miramar Police Department in Broward County, Florida for battery. On December 9, 1992, the applicant was charged in the Broward County Circuit Court in Florida with first degree battery, a misdemeanor. On February 5, 1993, the applicant pled *nolo contendere* and was placed on probation for nine months and ordered to pay a fine. Case no. [REDACTED]
4. On October 9, 1999, the applicant was arrested by the Miami-Dade Police Department in Florida for flight escape-fugitive from Broward County, Florida.

On April 1, 2003, the director issued a Request for Additional Evidence, which requested the applicant to submit the final court disposition for number four above as well as any other charges. The applicant, in response, asserted that the arrest of October 9, 1999, related to his battery conviction on February 5, 1993. The applicant asserted:

On 10/9/99, I was stopped in a routine traffic check in Dade County. When the Miami-Dade Police Officer ran my Driver's License, a bench warrant was pulled up for non-payment of the Rose Institute. I was subsequently arrested. When the case came up, the Judge later dismissed my case.

The applicant provided:

- Court documentation dated February 5, 1993, relating to a battery conviction. The applicant was placed on probation for nine months, ordered to pay a fine, and attend Rose Institute. Case no. [REDACTED]
- Court documentation dated February 1, 2000, relating to a charge of violation of probation in Case no. [REDACTED]. The applicant pled *nolo contendere* and his probation was revoked.

While both court documents list the same case number, the applicant has not provided sufficient evidence to support his assertion that the cases noted in numbers three and four above relate to each other. The court

documentation dated February 1, 2000, makes no mention of the flight escape-fugitive arrest, and no evidence such as the charging complaint or the police report, which would have established whether said arrest related to the February 5, 1993, battery conviction was submitted.

The applicant has the burden to establish, with *affirmative evidence* that outstanding charges did not result in convictions. A statement indicating that his arrest of October 9, 1999 relates to his battery conviction and the presentation of incomplete court documents is not affirmative evidence and fails to meet the applicant's burden. It is concluded the applicant has failed to provide the complete court dispositions for numbers one and four above necessary for the adjudication of his application.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he is admissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

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