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U.S. Citizenship
and Immigration
Services

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FILE: MSC 03 251 63259

Office: HOUSTON

Date:

JUL 30 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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 District Director, Houston, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant is statutorily ineligible to adjust status to lawful permanent residence under section 1104 of the LIFE Act because he properly filed an application under the Immigration Reform and Control Act of 1986 (IRCA) during the statutory time period. The director found that the IRCA application was denied for lack of prosecution.

On appeal, counsel for the applicant asserts that the applicant is statutorily eligible to adjust status under the LIFE Act despite the fact that he filed an application under IRCA that was denied and is currently on appeal.

A LIFE Act applicant must establish that, before October 1, 2000, he or she was a class member in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case there is no such evidence in the record. In fact, there is evidence that the applicant was not a class member. Class members are, by definition, individuals who were turned away or discouraged from filing a Form I-687 application during the original legalization application period of May 5, 1987 to May 4, 1988. See *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements). In this case, the applicant was not turned away or discouraged from applying. To the contrary, he filed a Form I-687 application on May 4, 1988, and was denied temporary resident status on June 24, 1993. In light of this evidence, the applicant would be ineligible to adjust status under section 1104 of the LIFE Act. Therefore, the director's decision to deny the application on this ground will be affirmed.

However, Service records indicate that the applicant's Form I-687 was reopened and approved on March 24, 2006. The applicant was therefore granted temporary residence status on March 24, 2006. (please see attached approval notice). The notice was mailed to the applicant's current address. The applicant has 43 months from the date of approval of his temporary residence to file Form I-698, Application to Adjust Status From Temporary to Permanent Resident. 8 C.F.R. § 245a.3(a)(1).

ORDER: The appeal is dismissed.



U.S. Citizenship
and Immigration
Services

March 24, 2006

[REDACTED]

RE: [REDACTED]

Dear [REDACTED]

On March 24, 2006, your application for status as a **temporary resident** was approved. You must file the Form I-698 to apply for permanent residence. Please follow the information below.

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) Application period for permanent residence.

- (1) An alien may submit an application for lawful permanent resident status, with fee, immediately subsequent to the granting of lawful temporary resident status. Any application received prior to the alien's becoming eligible for adjustment to permanent resident status will be administratively processed and held by the INS, but will not be considered filed until the beginning of the nineteenth month after the date the alien was granted temporary resident status as defined in § 245a.2(s) of this chapter.
- (2) No application shall be denied for failure to timely apply before the end of 43 months from the date of actual approval of the temporary resident application.

You must file the Form I-698 (Application to Adjust Status from Temporary to Permanent Resident), with the appropriate fees, no earlier than October 24, 2007, and no later than November 24, 2009.

Sincerely,

Handwritten signature of Evelyn M. Upchurch in black ink.

Evelyn M. Upchurch, Director
Texas Service Center