



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 01 282 60498

Office: NATIONAL BENEFITS CENTER

Date: **SEP 19 2008**

IN RE: Applicant:



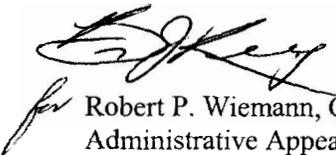
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
for 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, Missouri Service Center (MSC director). The matter was appealed to the Administrative Appeals Office (AAO), which remanded the application for further consideration and action. The Director, National Benefits Center (NBC director), withdrew the initial decision, denied the application again, and certified the case for review to the Chief, AAO. The director's decision will be affirmed.

The NBC director determined that the applicant failed to establish that he applied for class membership in one of the requisite legalization class action lawsuits prior to October 1, 2000, as required under section 1104(b) of the LIFE Act.

An applicant for permanent resident status under section 1104 of 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 one 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 section 1104(b) of the LIFE Act and 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. See 8 C.F.R. § 245a.14.

When the applicant filed for legalization under the LIFE Act on July 9, 2001, the record did not include any evidence that he had filed a written claim for class membership in CSS, LULAC, or Zambrano. In a Notice of Intent to Deny (NOID), dated August 14, 2001, the director advised the applicant to submit within 30 days "any documentation or evidence received from the Service" which shows that he applied for class membership in one of the legalization class action lawsuits before October 1, 2000.

The applicant responded with a letter asserting that he applied for class membership in the CSS class action lawsuit. The letter was accompanied by a photocopy of a receipt issued to the applicant by Catholic Social Services, Archdiocese of Philadelphia, Migration and Refugee Resettlement Department, dated April 15, 1994, indicating that \$35 had been received from the applicant for a consultation.

On September 4, 2002, the MSC director issued a Notice of Decision denying the application for LIFE legalization. The director stated that a previous application under the Special Agricultural Workers (SAW) program, filed pursuant to section 210 of the Immigration and Nationality Act (INA), rendered the applicant statutorily ineligible to adjust status under section 245 of the Act. The director also stated that the evidence submitted by the applicant did not establish that he applied for class membership in one of the legalization class action lawsuits.

The applicant filed a timely appeal, stating that he had been working in the United States for over 30 years, mostly as an agricultural laborer, paid his taxes annually, and had no criminal record.

On April 16, 2003, the AAO remanded the case to the MSC director. The AAO noted that the director had not analyzed the documentation submitted by the applicant as evidence of his claim for class membership in *CSS*, did not address the applicant's rebuttal statement in response to the NOID, and apparently did not check all appropriate records in Citizenship and Immigration Services (CIS).

On June 6, 2005, the NBC director issued a new decision in which he withdrew the MSC director's decision of September 4, 2002, denied the application for *LIFE* legalization once again, and certified the case for review to the Chief, AAO.

In the new decision the NBC director analyzed in detail the documentation submitted by the applicant with his Form I-485 application and in response to the NOID, and concluded that none of the materials provided prima facie evidence of a timely filed claim for class membership in *CSS* or one of the other legalization class action lawsuits. The director also reviewed CIS records of the applicant's wife, [REDACTED] since the applicant might qualify for benefits derivative to her status. The director determined, however, that the Form I-485 application [REDACTED] filed in 2001 (MSC 01 282 60493) had been deemed abandoned and denied on August 16, 2002, and that there was no evidence in her file or in CIS records that [REDACTED] had filed a written claim for class membership in one of the class action lawsuits – *CSS*, *LULAC*, or *Zambrano* – before October 1, 2000. Finally, the director reviewed the other documentation in the applicant's file and found that it did not include any prima facie evidence of a written claim for class membership in one of the legalization class action lawsuits, within the ambit of 8 C.F.R. § 245a.14.

In certifying the case to the AAO for review, the NBC director gave the applicant 30 days to submit a brief or written statement to the AAO. In response counsel submitted a letter asserting that the applicant's passport and immigration documents, including evidence of his request for class membership in *CSS*, were stolen from a briefcase in his apartment in January 1998. A photocopied police report of the incident was furnished as well. No further evidence of a claim for class membership has been submitted.

The applicant's assertion that his evidence of a written request for class membership in *CSS* was stolen in 1998 from a briefcase in his Fort Lauderdale apartment is not credible. In the police report the applicant describes the lost documents (from a suitcase, not a briefcase) as his passport and "green card" – neither of which would constitute prima facie evidence of a written claim for class membership in *CSS*, as described in 8 C.F.R. § 245a.14. Thus, there is still no evidence in the record that the applicant filed a written claim for class membership in *CSS*.

Counsel also pointed out on appeal that under the settlement agreement in the *CSS* legalization class action lawsuit evidence of a written claim for class membership is no longer required. Counsel acknowledged, however, that the *CSS* settlement applies to Form I-687 applications for

temporary resident status – the original filing period for which was back in 1987-1988 and the new filing period for which, under the CSS settlement, was December 31, 2005.<sup>1</sup> The CSS settlement, therefore, does not cover the Form I-485 application for permanent resident status filed by the applicant in 2001, which is the subject of this appeal.

The AAO has reviewed the NBC director's decision and finds it well reasoned and thorough.<sup>2</sup> The AAO concurs with the director's conclusion that the applicant has not established that he filed a claim for class membership in CSS, or either of the other legalization class action lawsuits, before October 1, 2000. Accordingly, the applicant is not eligible for adjustment to permanent resident status under the LIFE Act.

**ORDER:** The NBC director's decision of June 6, 2005 is affirmed. The appeal is dismissed. This decision constitutes a final notice of ineligibility.

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<sup>1</sup> Though counsel indicated that the applicant intended to file a Form I-687 and a CSS/Newman Class Membership Worksheet, the record does not show that he did so by the deadline of December 31, 2005.

<sup>2</sup> The director did neglect to mention one document that was submitted with the Form I-485 application in 2001. That document was an unsigned notice addressed to the applicant in [REDACTED], from the Legalization Office of the former Immigration and Naturalization Service in Portland, Maine, dated October 31, 1988, advising that "[a]s part of your application for legalization under the Immigration Reform and Control Act of 1986," the applicant had been granted a Social Security number. It is clear from the record that the "application for legalization" cited above was the Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker under section 210 of the INA, which the applicant had just filed on October 25, 1988. There is no record that the applicant ever filed, or attempted to file, a Form I-687, Application for Status as a Temporary Resident under section 245 of the INA.