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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 01 289 60246

Office: NEW YORK

Date: FEB 04 2009

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administration 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.¹

On appeal, counsel reiterates the applicant's claim that he had applied for membership in one of the requisite legalization class action lawsuits with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) prior to October 1, 2000. Counsel asserts that the applicant has provided sufficient supporting documentation to demonstrate that he had applied for class membership before the deadline date.

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*). 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).” 8 C.F.R. § 245a.14.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to

¹ The record shows that the applicant filed a separate Form I-687, Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act (Act), on June 21, 2005. The record further shows that the director of the New York office denied the Form I-687 application on June 25, 2007 because the applicant had been deemed to have abandoned his application pursuant to 8 C.F.R. § 103.2(b)(13) when he did not appear for his requisite interview scheduled for April 25, 2006. Pursuant to 8 C.F.R. 103.2(b)(15), a denial due to abandonment may not be appealed. Counsel subsequently attempted to file a motion to reconsider this decision on July 25, 2007. However, motions to reopen a proceeding or reconsider a decision shall not be considered pursuant to 8 C.F.R. §§ 103.5(b) and 245a.2(q). Consequently, the applicant remains ineligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245 of the Act.

the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible documentation to demonstrate that he filed a written claim for class membership in one of the legalization class-action lawsuits cited above before October 1, 2000. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed his Form I-485 LIFE Act application on July 16, 2001. The applicant provided photocopies of the following documents with his Form I-485 LIFE Act application:

- A Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act) that is signed by the applicant and dated March 27, 1993;
- A “Form for Determination of Class Membership in *CSS v. Thornburgh (Meese)*” that is signed by the applicant and dated March 27, 1993;
- Three appointment notices purportedly scheduling the applicant for appointments for the purpose of determining his class membership eligibility at a Service office in New York City on April 28, 1993, June 2, 1993, and July 12, 1993.

The photocopied documents such as that the applicant provided with his Form I-485 LIFE Act application may be considered as evidence of having made a written claim for class membership, pursuant to 8 C.F.R. § 245a.14(d). However, the record contains no evidence that either the Form I-687 application or the class membership determination form was submitted to the Service or its successor CIS prior to the filing of the applicant’s Form I-485 LIFE Act application on July 16, 2001. Although the three photocopied appointment notices contain the applicant’s name, address, and date of birth, all of this information is handwritten. In addition, the applicant’s date of birth, “7/5/56” is listed as a handwritten notation in the preprinted section where the issue date of the notice was to be entered on all three appointment notices. Neither the applicant nor counsel has provided any explanation as to why the appointment notices list the applicant’s date of birth instead of an issue date in this section. The record contains no evidence to demonstrate that the applicant appeared for an interview at the Service office in question or that a determination was reached regarding his eligibility for class membership on any of the dates cited above. Moreover, neither the

applicant nor counsel advanced any explanation as to why the applicant would need to appear on three separate occasions in order to determine whether he was eligible for class membership in a legalization class-action lawsuit. These factors raise serious questions regarding the authenticity and credibility of the supporting documentation, as well as the applicant's claim that he filed for class membership. Given these circumstances, it is concluded that photocopied documents provided by the applicant in support of his claim to class membership are of questionable probative value.

While the applicant also submitted documentation relating to his claim of residence in the United States in that period from prior to January 1, 1982 to May 4, 1988, such documentation cannot be considered as evidence that the applicant filed a claim to class membership in one of the requisite legalization class-action lawsuits prior to October 1, 2000.

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 Form I-485 LIFE Act application on October 15, 2007.

On appeal, counsel reiterates the applicant's claim that he had applied for membership in one of the requisite legalization class action lawsuits with the Service prior to October 1, 2000. Counsel asserts that the applicant has provided sufficient supporting documentation to demonstrate that he had applied for class membership before the deadline date. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to submit documentation that credibly establishes his having filed a timely written claim for class membership in one of the aforementioned 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 she *timely* filed a written claim for class membership, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

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