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FILE:



Office: LAGUNA NIGUEL

Date: **MAY 06 2009**

MSC 03 189 60978

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.

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 in Laguna Niguel, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the applicant on the ground that the applicant failed to establish that she had 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, did not meet the definition of “eligible alien” as defined in 8 C.F.R. § 245a.10, and is therefore ineligible for adjustment of status under the LIFE Act..

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, that 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 her current LIFE application on April 7, 2003, the record included the following documentary evidence that she had been qualified for class membership in CSS, each of which conforms with one of the illustrative list of documents in 8 C.F.R. § 245a.14.

- Three approved Forms I 512 (Authorization for Advanced Parole of an Alien into the United States), dated July 9, 1990, September 17, 1992, and July 22, 1997.
- A copy of Form I-688A (Employment Authorization) issued on December 22, 1989, under section 245A.
- A Form I-687, Application for Status as a Temporary Resident (Under section 245A of the Immigration and Nationality Act), dated and signed by the applicant on December 21, 1989, which service records indicate was filed on May 2, 1991.

In a Notice of Intent to Deny (NOID) dated June 15, 2005, the director stated that the records show that the applicant entered the United States legally for the first time on August 27, 1982, and was admitted as a visitor for pleasure. The director further indicated that because the applicant did not enter the United States until 1982, that she is not eligible to adjust status under the LIFE Act.

The record does not show that the applicant responded to the NOID, and on August 19, 2006, the director issued a Notice of Decision, denying the application. In his decision denying the application on August 19, 2006, the director indicated that the applicant had not submitted any evidence of class membership in any of the legalization lawsuits.

Counsel timely filed an appeal, asserting that the copies of the Forms I-512 and the employment authorization in the file are conclusive evidence to establish the applicant's class membership in one of the legalization class action lawsuits.

The AAO finds that the director's conclusion that the applicant was not a class member in one of the class action lawsuits, despite the documentary evidence in the record that shows otherwise, is not supported by the evidence. The documents listed above are credible indication that the applicant must have been qualified as a class member in one of the legalization class action lawsuit. Thus, the director decision that the applicant has not submitted any evidence of class membership in any of the legalization class action lawsuits, is hereby withdrawn.

In accordance with the AAO's plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989), the AAO will review the record to determine if the applicant has submitted sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through May 4, 1988.

The record reflects that the file contains a Form I-94 (Arrival and Departure Record), which shows that the applicant was admitted into the United States on August 27, 1982, on a B-1 visa, with authorization to remain in the country until October 27, 1982. The record further reflects that the applicant applied for and was granted an extension of stay until December 5, 1982. This record shows that the applicant was in valid legal status from at least August 27, 1982 through December 5, 1982, and therefore will be unable to establish that she entered the United States before January 1, 1982 and resided continuously in an unlawful status from before January 1, 1982 through May 4, 1988, as required for legalization under the LIFE Act.

The applicant has submitted documents of questionable credibility to establish her continuous residence in the United States during the requisite period for LIFE legalization, however, non of the documents dates from before January 1, 1982. For example, the applicant submitted a residential lease agreement between Abacus II Limited Partnership as landlord, and the applicant and her husband as Tenants, for ██████████ Falls Church, Virginia, dated June 18, 1986, for a lease term beginning June 19, 1986, ending June 30, 1987. The applicant however, listed her residential address on the Form I-687 (application for status as a temporary resident), dated December 12, 1989, as ██████████, Arlington, Virginia, from September 1986 to the

present (1990). The copy of a Form 1040A US Individual Income Tax Return for 1985, listed the applicant and her husband as taxpayers and their home address as [REDACTED] Oxon Hill, Maryland. The applicant however, listed her address during **the same period as** [REDACTED] Falls Church, Virginia, from June 1984 to September 1986. The inconsistencies noted above cast considerable doubt on the veracity and credibility of the documents as credible evidence of the applicant's continuous residence in the United States. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, it cannot be said that the applicant has submitted sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988.

For the reasons discussed above, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under the LIFE Act.

The appeal will be dismissed, and the application denied.

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