

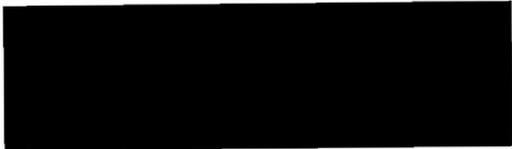


U.S. Citizenship
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FILE:



MSC 02 358 61349

Offices: ST. LOUIS, MISSOURI

Date:

OCT 16 2009

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. 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.

Perry J. Rhew
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 St. Louis, Missouri. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds (1) that the applicant failed to establish that she continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and (2) that she is eligible for family Unity Benefits under section 1504 of the LIFE Act.

On appeal, the applicant asserts that she is eligible for family unity benefit because she is a derivative class member under her husband's application and that her husband's conviction for a felony should not affect her eligibility for the benefit sought.

It appears that the applicant is seeking benefit under two provisions of the Act – section 1104 of the LIFE Act and section 1505 of the LIFE Act. In accordance with the plenary power for a *de novo* review, the AAO will examine the record to determine if the applicant is eligible for the benefit sought.

An applicant for permanent resident status under section 1104 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. In the alternative, an applicant may demonstrate that his or her spouse or parent filed a written claim for class membership before October 1, 2000. However, the applicant must establish that the family relationship existed at the time the spouse or parent initially attempted to apply for temporary residence (legalization) in the period of May 5, 1987 to May 4, 1988. See 8 C.F.R. § 245a.10.

The applicant neither claimed nor documented that she filed a timely claim for class membership in any of the aforementioned legalization class-action lawsuits with her initial LIFE Act application. The applicant indicated that she is applying for LIFE legalization under the Family Unity Benefits because her husband [REDACTED] had filed a claim for class membership in one of the requisite legalization class-action lawsuits. A review of the records maintained by the United States Citizenship and Immigration Services (USCIS) on A-file [REDACTED] belonging to the applicant's husband shows that he filed for legalization in 1991 and was qualified as a class member in one of the requisite legalization lawsuits cited above. However, the record from the applicant's husband's administrative files does not establish that the applicant was married to her husband when her husband filed for legalization. The record reflects that the applicant's alleged husband was married to another person – [REDACTED] on October 9, 1992, that [REDACTED] filed an I-130 (petition for an alien relative) on the applicant's behalf on November 10, 1992, and that the

applicant filed a corresponding Form I-485 under [REDACTED] on the same date, which was denied on August 9, 1996. Therefore, at the time the applicant claimed to be married to her husband (1995) service records show that her alleged husband was married to another person. Additionally, on the Form I-687 (application for status as a temporary resident) [REDACTED] filed in 1991, he indicated that he was unmarried at that time, and on the Form I-687 he filed in December 30, 2005, he did not indicate the applicant as his wife. There is no documentation in [REDACTED] administrative file to show that he was divorced from his wife [REDACTED]. Thus, the applicant's claim that she was married to [REDACTED] on December 14, 1995, is not credible.

Therefore, since the applicant could not establish that a family relationship existed between her and [REDACTED] at the time [REDACTED] initially attempted to apply for legalization in the period of May 5, 1987 to May 4, 1988, or when he filed the Form [REDACTED] I-687 in 1991, the applicant cannot claim class membership as a derivative alien pursuant to 8 C.F.R. § 245a.10. Furthermore, the record reflects that [REDACTED] application for temporary resident status was denied because he could not establish that he entered the United States and resided in the country during the requisite period for legalization under the LIFE Act.

The applicant asserts on appeal that she is entitled to file a separate application and be evaluated based on her own eligibility. To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *no single absence* from the United States has *exceeded forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

A review of the record reveals that the applicant, a native of Senegal, who claims to have continuously resided in the United States from before January 1, 1982 through May 4, 1988, submitted her Form I-485 LIFE Act application on September 23, 2002.

As evidence of her continuous residence in the United States during the requisite period, the applicant submitted a series of affidavits from individuals who claim to have known the applicant during the 1980s. The affidavits in the record have minimalist formats with very few details about the applicant's life in the United States during the 1980s. The affiants provided very few details of the applicant's life in the United States, such as where she worked and the nature and extent of their relationships with the applicant during those years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiant's personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

The AAO notes that there is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for LIFE legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988. **In fact, the applicant did not submit any documentation to establish when she entered the United States.**

Thus, based on the analysis of the evidence, the AAO finds 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.

With regards to the applicant's claim for eligibility under section 1504 of the Act, the regulation at 8 C.F.R. § 245a.31, provides that an alien currently in the United States may obtain Family Unity Benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

- (a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;
- (b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and
- (c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485 pursuant to Subpart B.

A review of the record shows that the applicant did not satisfy any of the provisions listed at 8 C.F.R. § 245a.31. As discussed above, the applicant did not establish that she is the spouse of

█ the applicant did not establish that she entered the United States before December 1, 1988, and the applicant did not properly file an application for Family Unity benefit on a Form I-817 with the then Immigration and Naturalization Service (now United States Citizenship and Immigration Services, or USCIS). Thus, the applicant is not eligible for benefit under the Family Unity Benefits Act.

Under section 1504, the benefit sought is protection from removal. Under section 1104, the benefit sought is permanent residence. As discussed above, under section 1504, the eligibility of a spouse or child is determined by the derivative applicant having entered the United States prior to December 1, 1988, and maintaining residence from that date. However, under section 1104, the eligibility of the spouse or child is determined by the derivative applicant meeting the same eligibility specifications, including continuous residence in the United States from prior to January 1, 1982 to May 1, 1988, as required of the principal applicant.

The application for permanent residence under section 1104 cannot be approved for the reasons stated above. This is the only application that is before this office on appeal. If an applicant were to file a separate application for Family Unity and receive a denial of that application, there is no appeal of that denial.

Given her inability to meet the requirements, the applicant is ineligible for permanent residence under section 1104 of 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.