

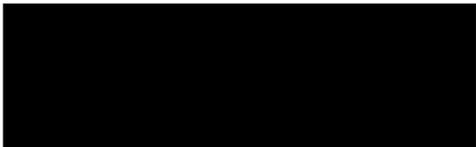


U.S. Citizenship
and Immigration
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FILE: MSC 03 224 61748

Office: SAN FRANCISCO

Date: AUG 28 2007

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 District Director, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action and consideration.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.20(a)(2) provides that when an adverse decision is proposed, the Citizenship and Immigration Services shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted 30 days from the date of the notice in which to respond to the Notice of Intent to Deny (NOID).

The record indicates that on December 11, 2003, the director issued an "Intent to Deny-Request for Evidence." The notice, however, only requested that the applicant list all of his absences from the United States since January 1, 1982, and provide evidence to establish his residence and presence during the requisite period. As the notice did not address the evidence furnished initially and indicate the basis for the proposed denial, it cannot be considered a NOID.

While the director adequately summarized the deficiencies in the applicant's evidence, including the inability of the district office to verify the information provided, the failure of the director to issue a NOID resulted in not giving the applicant an opportunity to address any of the noted deficiencies in his evidence prior to the denial. Of particular note is the applicant's admission in a February 18, 2004 statement that he left the United States in June or July 1986 and did not return until September 10, 1988. Although the applicant alleged that his absence was prolonged by the illness and subsequent death of his mother, the applicant failed to establish that his prolonged stay was due to emergent reasons.

Accordingly, the case is remanded for the issuance of a Notice to Deny and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

ORDER: This matter is remanded for further action and consideration pursuant to the above.