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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:



Office: NATIONAL BENEFITS CENTER

Date: MAY 18 2004

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the (LIFE) Act was denied by [REDACTED]. It is now on appeal before the Administrative Appeals Office (AAO). The matter will be remanded for further consideration.

The director found that the applicant was inadmissible to the United States under section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (INA), which states: "In General: Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including Section 247A) or any other Federal or State laws is inadmissible." The director noted that this provision had been invoked against the applicant in a prior proceeding. [REDACTED] director stated, "you were found to be inadmissible to the United States by the Bureau a [REDACTED] making [REDACTED] presented with Form I-860 [REDACTED] EXPEDITIOUSLY REMOVED FROM THE UNITED STATES." (Emphasis in the original.) The director also ruled that no waivers were available for aliens found inadmissible under section 212(a)(6)(c)(ii)(I). Accordingly, the director concluded that the applicant was ineligible for admission to the United States and denied his LIFE application.

On appeal, the applicant acknowledges have misrepresented himself as a U.S. citizen out of fear of having to return to his country of origin, and requests that he be allowed to remain in the U.S.

The record includes a Form I-213 Record of [REDACTED] indicating that he was apprehended while attempting to enter the United States illegally at the [REDACTED]. The inspector found the applicant to be in violation of section 212(a)(6)(C)(i)(i) of the INA (falsely claiming citizenship) as well as section 212(a)(7)(A)(i)(I) of the INA (not in possession of a valid entry document). The applicant was served with [REDACTED] ordered removed from the [REDACTED].

Section 1104(c)(2)(D)(i) of the LIFE Act specifies that an applicant for permanent resident status must establish that he or she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. The applicant must also establish that (s)he has not been convicted of a felony or three misdemeanors in the United States, has not assisted in persecution activities, and is registered under the Military Selective Service Act, if required. See section 1104(c)(2)(D)(ii), (iii) and (iv) of the LIFE Act.) Section 245A(d)(2) of the INA, which allows the grounds for an alien's exclusion to be waived in certain cases, provides that any provision of section 212(a) of the INA, defining classes of aliens who are ineligible for visas or admission, may be *waived* on a case by case basis for "humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," *unless* the grounds for the alien's exclusion involve certain criminal convictions (section 212(a)(2)(A) and (B), INA), drug offenses (section 212(a)(2)(C), INA), national security violations (section 212(a)(3), INA), or the likelihood of becoming a public charge (section 212(a)(4), INA). See section 245A(d)(2)(B) of the INA. The foregoing provisions govern the grounds of inadmissibility and waivers for *amnesty applicants* under section 1104 of the LIFE Act and section 245A of the INA. While the applicant is clearly inadmissible under section 212(a)(6)(c)(ii)(I) of the INA, a waiver of this ground is available to applicants under section 1104 of the LIFE Act.

In his decision denying the instant LIFE application, the director did not determine whether the applicant should be allowed to apply for a waiver, or whether he was ineligible for admission because his removal in [REDACTED] "making a false claim to United States citizenship" constitutes a non-waivable ground of inadmissibility.

Accordingly, this matter will be remanded for the purpose of a new decision. Aside from addressing the matter of whether the applicant may apply for a waiver under section 1104(c)(2)(D) of the LIFE Act and section 245A(d)(2) of the INA, the director shall also determine whether the applicant filed a written claim for class membership before [REDACTED] in one of the requisite class-action legalization lawsuits. An applicant for permanent resident status under section 1104 of the LIFE Act must establish that [REDACTED] or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: [REDACTED] vacate [REDACTED]

sub [REDACTED] vacated [REDACTED]

ORDER: This matter is remanded for further consideration pursuant to the foregoing analysis.