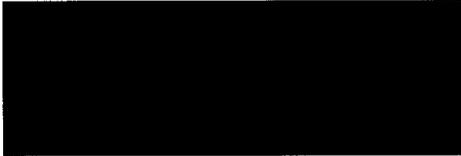


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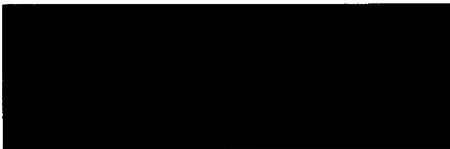
Office: San Antonio

Date:

IN RE: Applicant:

PETITION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2001, 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. 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

Robert P. Wiemann, Director
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 Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because for lack of prosecution because the applicant had failed to appear for required adjustment interviews on three successive occasions.

On appeal, counsel submits additional evidence in an effort to account for why the applicant was unable to appear for three successive scheduled adjustment interviews.

Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution. 8 C.F.R. § 245a.19(a).

The record indicates that the applicant failed to appear for three successive scheduled adjustment interviews at the San Antonio, Texas District Office of Citizenship and Immigration Services (CIS) – on June 16, 2003, on September 5, 2003 and, again, on October 30, 2003. On appeal, counsel asserts the applicant's inability to be present at his adjustment interviews were the result of circumstances beyond his control, and submits the following evidence:

- A communication from [REDACTED] on the physician's letterhead stationary indicating that, on June 11, 2003, the applicant was admitted as a patient to Breckenridge Hospital, where he was released on June 18, 2003; and
- An undated letter from attorney [REDACTED] o, who indicated that the applicant -- his client in a separate, criminal proceeding -- had been detained in Salina, Kansas on a traffic infraction while en route to appear in South Lake Tahoe, California, regarding a prior outstanding warrant concerning a 1990 controlled substance charge. In addition, [REDACTED] stated that his client would be incarcerated in Salina, Kansas until September 11, 2003, at which time he would be transported to California to address the outstanding warrant regarding his prior drug charge.

Counsel, on appeal, asserts that, [REDACTED] communication supports counsel's assertion that, as a result of having been admitted and confined to Breckenridge Hospital from June 11 until June 18, 2003, the applicant was unable to appear for his June 16, 2003 CIS adjustment interview. In addition, counsel asserts that the letter from attorney [REDACTED] establishes that the applicant was also unable to appear for his subsequently-scheduled September 5, 2003 district office interview. However, the letter from attorney [REDACTED] is undated. Nor is it clear from [REDACTED] letter exactly what date the applicant had been apprehended in Kansas on route to South Lake Tahoe, California. Moreover, counsel has submitted no additional evidence from the authorities in Salina, Kansas or from the El Dorado County District Attorney's office to support Mr. [REDACTED] assertions. Finally, although counsel asserts that the applicant was unable to appear for his third scheduled adjustment interview on October 30, 2003 due to unspecified illness, he has submitted no additional, independent, corroborative evidence to support such statement. Accordingly, the district office's denial of the application due to the applicant's failure to appear for his required adjustment interview on three successive occasions is hereby affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that

the AAO reviews appeals on a *de novo* basis). Although not dealt with in the notice of decision, the record also reflects that, on the occasion of the applicant's adjustment interview relating to his LIFE Act application at the Los Angeles District Office on September 25, 2003, he was issued a Form I-72, Request for Additional Information (RFE), in which he was asked to provide court dispositions regarding a June 6, 1990 arrest in South Tahoe, California, in which the applicant was charged with possession of a narcotic controlled substance for sale.

Any information obtained by CIS indicating that an applicant may have a criminal record is subject to further verification of the pertinent facts. Such applicant has the burden of proving by a preponderance of the evidence that he or she...is admissible to the United States under the provisions of section 212(a) of the Act. 8 C.F.R. § 245a.12(e). On March 3, 2003, counsel informed CIS that the applicant had been unable to obtain the requested documents pertaining to the court disposition of his narcotics arrest, and requested additional time in which to provide this documentation. As of this date, no such court dispositions have been submitted into the record. In failing to provide documents necessary for a proper adjudication of his application, the applicant in this case has failed to establish such admissibility. Therefore, the applicant's appeal must be dismissed on this basis as well.

In view of the applicant's failure to appear for three successive scheduled interviews for the purpose of establishing eligibility for adjustment to permanent resident status, along with his failure to provide requested documents necessary for a proper adjudication as to his admissibility to the U.S., the applicant's appeal must be dismissed.

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