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



U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] MSC 01 303 60296

Office: LOS ANGELES

Date: JUN 01 2006

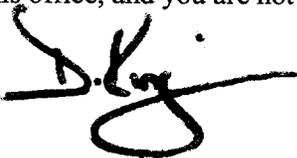
IN RE: Applicant: [Redacted]

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:
[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. This matter 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 from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the district office asked for specific documentation that was impossible for the applicant to obtain. Counsel further asserts that the applicant was not informed of other documentation that he could submit to establish his residency during the qualifying period.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

Denials. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

The record does not reflect that a Notice of Intent to Deny (NOID) was issued prior to the director's Notice of Decision. Accordingly, the decision of the director is withdrawn. The case is remanded for the issuance of a NOID 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.

The NOID should address the applicant's lack of evidence to establish his continuous residence and presence in the United States during the qualifying period. The applicant claims to have first entered the United States in 1979 and worked for ten years for [REDACTED] in Illinois. However, the only evidence of his residency and presence in the United States are affidavits from family and friends. Although alleging that he resided in the United States for more than 22 years at the time he filed his application under the LIFE Act, the applicant submitted no contemporaneous evidence of his residency during the qualifying period.

The record reflects that the applicant has the following criminal history:

The Norwalk Sheriff's Department arrested the applicant on May 1, 1991 and charged him on two counts.

Count 01: 11350(a) H&S Felony – possession of narcotics.

Count 02: 11550(a) H&S Felony – use/under influence of controlled substance.

The El Monte Municipal Court placed the applicant in diversion on July 3, 1991 and on January 24, 1992, both counts were dismissed in the furtherance of justice.

The Los Angeles Sheriff's Department arrested the applicant on January 19, 1994 and charged him as follows:

Count 01: 23152(a) VC misdemeanor – under influence alcohol/drug in vehicle.

Count 02: 23152(b) VC misdemeanor - .08% more weight alcohol drive vehicle.

The first charge was dismissed and the applicant was convicted of the second charge.

On March 4, 1995, the West Covina Police Department arrested the applicant and charged him with the following:

Count 01: 23152(a) VC misdemeanor – under influence of alcohol/drug in vehicle.

Count 02: 23152(b) VC – misdemeanor - .08% more weight alcohol drive vehicle.

On April 11, 1995, the applicant pled guilty to count 2 and admitted his prior conviction. The imposition of his sentence was suspended and he was given summary probation for three years, a fine and 48 hours in jail.

The applicant has two misdemeanor convictions. In the NOID, the director should ask the applicant whether he has had any subsequent arrests, and if so, to provide arrest and court records.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the applicant, is to be certified to the AAO for review.