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



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE: [REDACTED] Office: CHICAGO  
MSC 02 245 63325

Date: MAY 19 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 District Director, Chicago, Illinois, 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 applicant has submitted numerous documents that establish his continuous residency in the United States since prior to January 1, 1982 to May 4, 1988.

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 failure to establish his presence and residency in the United States prior to 1985. Although he submitted a copy of an envelope addressed to him in the United States, and bearing a 1981 postmark, such a document would, without more, establish only physical presence at a given date. The affidavits submitted by the applicant to support his continuous residency in the United States lack sufficient detail to provide credible and probative evidence of the beneficiary's presence in the United States during the qualifying period. Further, the date that the affiants claim that the applicant initially entered the United States conflicts with earlier statements by the applicant.

The NOID should also address the applicant's statement that his presence was illegal because, while he entered the United States pursuant to an F-1 nonimmigrant student visa, he violated his visa by working. The applicant submitted copies of his social security earnings statement in an effort to verify his presence and status. The social security earnings statement does not reflect any wages prior to 1985 and show no wages in 1988.

The NOID should also address the applicant's prolonged absences from the United States. While in later statements the applicant claims only to have been absent from the United States for a short period in 1987, his statements on the Form I-687, Application for Status as a Temporary Resident, reflect three absences during the qualifying period, each for at least one month. Re-entry stamps by U.S. immigration officials confirm two of these absences. During his LIFE Act interview, the applicant stated that he left the United States for "a couple of months" in 1983, and for 2-3 weeks in 1987.

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