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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MAY 19 2006

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER

Date:

MSC 03 247 60336

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 Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

The director denied the application as the applicant had been found inadmissible under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), because he had made a false claim of United States citizenship.

On appeal, the applicant asserts that, because he did not appear in an immigration court, he was not aware that he had been removed. The applicant states that his application for a waiver had been denied.

An applicant for permanent resident status under the provisions of LIFE Act must establish that she is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Act. Section 1140(c)(2)(D)(i) of the LIFE ACT.

The record reflects that on July 3, 1998, the applicant was stopped crossing the border in Brownsville, Texas and falsely represented to the border patrol that he was a United States citizen. The applicant was found inadmissible under section 212(a)(6)(C)(ii) of the Act, and was processed for expedited removal. The applicant was served with Form I-860, Notice and Order of Expedited Removal, and was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act. The applicant indicated on an April 18, 2003 Form I-765, Application for Employment Authorization, that he last re-entered the United States without lawful admission on February 12, 2003.

The fact that the applicant was removed under section 212(a)(6)(C)(ii) of the Act, and then reentered without permission under section 212(a)(9) of the Act, renders him inadmissible. However, such grounds of inadmissibility may be waived pursuant to section 245A(d)(2) of the Act. *See* 8 C.F.R. § 245a.18(c). The director erred in denying this application and in his January 6, 2004 decision of the applicant's request for waiver when he concluded that this ground of inadmissibility could not be waived.

Accordingly, the director shall accord the applicant the opportunity to reapply for a waiver of inadmissibility regarding sections 212(a)(6)(C)(ii) and 212(a)(9) of the Act. When adjudication of the waiver application is complete, the application for permanent resident status shall be adjudicated.

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