



U.S. Citizenship
and Immigration
Services

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FILE:



Office: San Antonio

Date: **MAY 24 2006**

MSC 02 036 62889

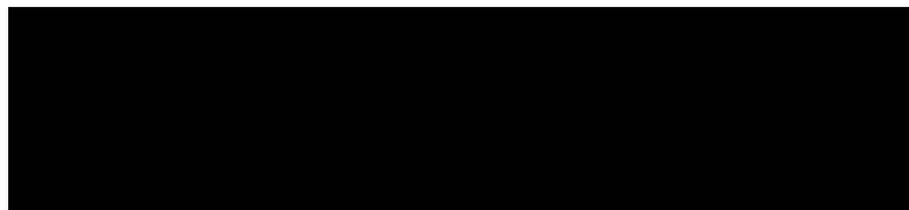
IN RE:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, San Antonio, Texas, 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 failed to establish residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988.

On appeal, counsel submits a brief in which he asserts that the applicant has submitted sufficient evidence in support of his claim of residence in this country for the requisite period. Counsel includes copies of previously submitted documentation in support of the appeal.

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.

A review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to the applicant, his former representative, or current counsel. Further, in the notice of decision the district director stated that “[a]ffidavits standing alone and not supported by credible cannot be considered as concrete evidence.” The district director’s analysis of the evidence submitted by the applicant in support of his claim of residence is incorrect in that affidavits in certain cases *can* effectively meet the preponderance of evidence standard and the district director cannot disregard but must consider such evidence whether or not it is unaccompanied by other forms of documentation. *See* 8 C.F.R. § 245a.12(f), 8 C.F.R. § 245a.15(b)(1), 8 C.F.R. § 245a.2(d)(3), *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989), and Memorandum from Dea Carpenter, Acting Principal Legal Advisor, Citizenship and Immigration Services (CIS) to William R. Yates, Associate Director, Operations, CIS, *Adjudication of LIFE Legalization Applications 2* (December 5, 2003)(copy on file with CIS).

Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of the issuance of a notice of intent to deny, which addresses the evidence and specifies why it is insufficient, as well as a new decision to both counsel and the applicant. The new decision, if adverse, shall be certified to this office for review.

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