



U.S. Citizenship
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FILE: [Redacted]
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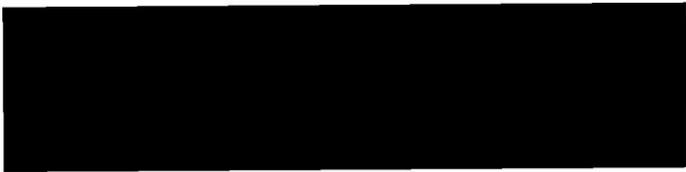
Office: Boston

MAY 24 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:



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, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director concluded the applicant had failed to appear for the requisite interview on “two occasions” and denied the application for lack of prosecution pursuant to 8 C.F.R. § 245a.19(a).

On appeal, counsel asserts that neither he nor the applicant ever received notice that his request to reschedule the March 28, 2005 appointment for the requisite interview had been denied by Citizenship and Immigration Services or CIS (successor to the Immigration and Naturalization Service or the Service).

8 C.F.R. § 245a.19(a) states in pertinent part:

All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center [or the appropriate District Director]. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution.

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 either counsel or the applicant. Accordingly, the decision of the district director is withdrawn.

The record shows that the district director has scheduled the applicant to appear for the requisite interview on six separate occasions: February 25, 2003, April 21, 2003, October 6, 2003, April 20, 2004, November 1, 2004, and March 25, 2005. The record further shows that counsel has requested that the interview be rescheduled on each occasion with five of the requests being predicated upon counsel being unable to appear on February 25, 2003, April 21, 2003, October 6, 2003, April 20, 2004, and March 25, 2005, and the applicant being unable to appear on November 1, 2004. The record contains documentation that tends to establish that counsel’s six requests to reschedule the interview have been based upon good faith representations that either he or the applicant could not

appear on the scheduled dates. The record demonstrates that the district director has been more than compliant and accommodating in granting each and every request to reschedule these appointments prior to the request to reschedule the interview appointment on March 25, 2005. The district director's power and authority to grant a request to reschedule an appointment is discretionary regardless of the reason for the request as 8 C.F.R. § 245a.19(a) clearly states, "An applicant failing to appear for the scheduled interview **may** [emphasis added], for good cause, be afforded another interview."

The case will be remanded for the purpose of issuing a notice of intent and entering a new decision. 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.