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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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FILE: [REDACTED]
MSC 02 179 62915

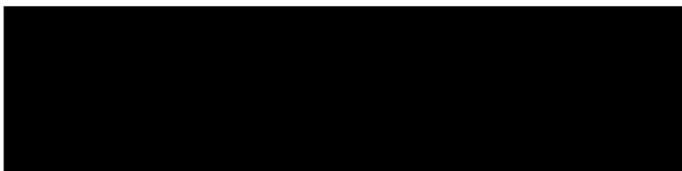
Office: SAN ANTONIO

Date: DEC 11 2007

IN RE: Applicant: [REDACTED]

PETITION: 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. 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, San Antonio, 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. Specifically, the district director found that the applicant had not submitted sufficient documentary evidence to support a finding that he was continually residing and continually present in the United States in an unlawful status during the relevant period. The director further noted that the affidavits submitted by the applicant, without additional documentary evidence to support the claims therein, were insufficient to establish the applicant's eligibility.

On appeal, counsel alleges that the district director erred in denying the application, and argues that the applicant sustained his burden of proof. Counsel asserts that the director did not consider the application in its totality, and avers that dismissing the affidavits provided by the applicant prior to adjudication as worthless is a violation of 8 C.F.R. § 245a.12(a)(g). Counsel submits additional evidence in support of the applicant's eligibility.

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 thorough review of the applicant's file confirms that a notice of intent to deny was not issued in this matter prior to the denial of the application on January 13, 2004. Accordingly, the decision of the director is withdrawn. The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the applicant and counsel. The new decision, if adverse to the applicant, shall be certified to this office for review.

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