

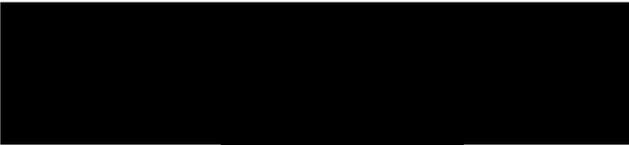
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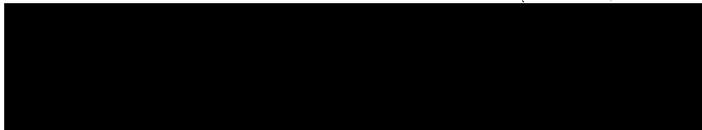
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FILE: MSC-02-243-61570

Office: HOUSTON Date: DEC 12 2007

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, Houston. The decision is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

The director determined that, because the applicant was unable to conduct the two scheduled interviews in English, he was unable to meet his burden of proof and establish his eligibility for Adjustment of Status under the LIFE Act.

On appeal, counsel for the applicant explained that the director failed to issue a Notice of Intent to Deny prior to denying the application, as required by 8 C.F.R. § 245a.20(a)(2).

Under 8 C.F.R. § 245a.20(a)(2), when an adverse decision is proposed in response to an application for adjustment of status under the LIFE Act, Citizenship and Immigration Services (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 NOID. 8 C.F.R. § 245a.20(a)(2).

A review of the record reveals that the director failed to issue a NOID to the applicant including the basis for the proposed denial and granting the applicant 30 days to submit a response. Accordingly, the decision of the director is withdrawn. The case will be remanded for reconsideration by the director.

If the director finds that the applicant is ineligible for adjustment of status under the LIFE Act, the director must first issue a NOID explaining the basis for the proposed denial and provide the applicant with 30 days to submit a response. Once the applicant has had an opportunity to respond to such notice, if the applicant has not overcome the director's finding, then the director must issue a new decision regarding the applicant's eligibility for adjustment of status under the LIFE Act. Any new adverse decision and still pending appeal shall be forwarded to the AAO for review and adjudication of the applicant's appeal as it relates to the issues raised by the director in the NOID and new decision.

According to evidence in the record, the Beaumont, Texas Sheriff's Office arrested the applicant on August 13, 1995, and charged him with *driving while intoxicated*.

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