



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 02 013 62202

Office: CHICAGO

Date: MAY 22 2007

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IN RE:

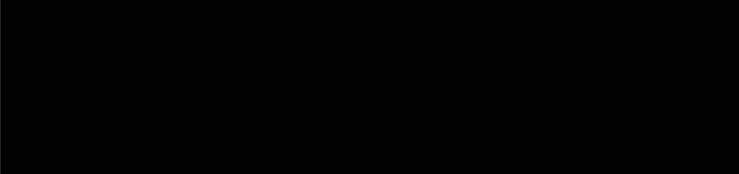
Applicant:



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. 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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act on June 19, 2004. Counsel filed a motion to reopen on July 14, 2004, which was denied by the director on December 20, 2004 as “superfluous” and “filed in error.” The applicant, through counsel, appeals the director’s denial of the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded that 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. This decision was based on the director’s conclusion that the applicant had exceeded the forty-five day limit for a single absence, as well as the aggregate limit of 180 days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the director abused his discretion in denying the motion. Counsel submits a brief and copies of previously submitted documentation in support of the appeal.

The director denied the application, noting that the applicant failed to respond to the Notice of Intent to Deny (NOID) issued on March 29, 2004. The director notified the applicant that he could appeal the denial of his application to the AAO.

On July 14, 2004, counsel filed a motion to reopen pursuant to 8 C.F.R. § 103.5, and provided evidence that the applicant had timely responded to the NOID. However, the regulation at 8 C.F.R. § 103.5 at subpart (a) specifically indicates that it does not apply to legalization cases. The regulation at 8 C.F.R. § 245a.20(c) provides, in pertinent part:

The Service director who denied the application may reopen and reconsider any adverse decision *sua sponte*. When an appeal to the AAO has been filed, the director may issue a new decision that will grant the benefit that has been requested. Motions to reopen a proceeding or reconsider a decision shall not be considered under this Subpart B.

While the director could, and should, have reopened his decision on service motion, he properly denied the applicant’s motion pursuant to regulation. As the applicant had no legal entitlement to file a motion to reopen the denial of his application, the AAO has no jurisdiction over an appeal of the denial of that motion. Therefore, the appeal must be rejected.

ORDER: The appeal is rejected.