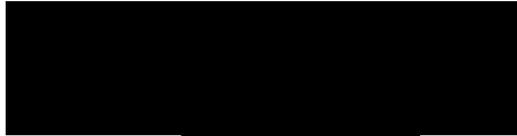


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Services

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FILE:

MSC-02-226-60445

Office: NEW YORK

Date:

OCT 11 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 National Benefits Center. 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 read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, of the New York District office and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b). The regulation at 8 C.F.R. § 245a.15(c)(1) further states that an applicant shall be regarded as having continuously resided in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days during the requisite period unless the applicant can establish that his or her return was untimely due to emergent reasons. The regulation at 8 C.F.R. § 245a.12(e) state that applicants for adjustment of status to that of a Legal Permanent Resident under this section bear the burden of establishing that they have resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence.

The director stated in her Notice of Intent to Deny (NOID) that here, the applicant did not meet his burden of proving, by a preponderance of the evidence, that he maintained continuous residence in the United States for the duration of the requisite period. In saying this, the director noted that the applicant failed to submit school records or immunization records though he claimed to have entered the United States when he was twelve (12) years old. She further stated that she did not find the affidavits submitted by the applicant to be credible nor were they amenable to verification when the Service attempted to so do. The director went on to cite the regulation at 8 C.F.R. § 245a.2(d) which states in pertinent part that applications submitted with unverifiable documentation may be denied. Therefore, the director determined that the applicant did satisfy his burden of proof of establishing by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. However, as the applicant failed to submit additional evidence, he did not overcome the director's reasons for denial as stated in her NOID. Therefore, she denied the application.

It is noted here that the record shows that the applicant was arrested for assault and battery on February 17, 2000. However, a court disposition in the record shows that the case against the applicant was dismissed on recommendation of the probation department.

It is noted that this record of arrest and subsequent dismissal of the charges associated with that arrest alone is not cause to determine that the applicant is ineligible to adjust to Permanent Resident Status under 8 C.F.R. § 245a.18(a) as this arrest does not constitute a conviction of a felony or three or more misdemeanors committed in the United States.

On appeal, the applicant states that he believes that the documents submitted when combined

with his testimony are sufficient to warrant a favorable exercise of discretion. He goes on to say that he believes that the decision of the director was arbitrary and not supported by the facts of the circumstances in his case.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.