



U.S. Citizenship
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Services

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FILE: MSC-02-248-63177

Office: LOS ANGELES

Date: JAN 25 2008

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 section 1104 of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, on January 9, 2006. That decision was appealed to the Administrative Appeals Office (AAO) on March 23, 2006. The AAO rejected the appeal on October 11, 2007 as untimely filed. The applicant, through counsel, has filed a Motion to Reconsider, claiming that the failure to submit a timely appeal was due to error by U.S. Citizenship and Immigration Services (CIS) in failing to send notice of its denial to the applicant's address of record. In response, the AAO has sua sponte reopened its prior decision.¹ The AAO's decision of October 11, 2007 will be withdrawn. The director's decision of January 9, 2006 will be withdrawn, and the matter will be remanded to the director for appropriate action consistent with this decision.

With his Motion to Reconsider, the applicant submitted a copy of a letter from CIS to the applicant, dated December 13, 2005, confirming that the applicant contacted the CIS Santa Ana office on November 30, 2005 and provided his current address. The letter adds that the applicant asked that CIS update his address when he called and that, accordingly, CIS had done so. As of November 30, 2005, therefore, the applicant's address of record was [REDACTED]

The record reflects that CIS thereafter failed to provide proper notice regarding the processing of his application to the applicant at his last known address, or address of record, as required by regulation. 8 C.F.R. § 103.5a. The director denied the application for lack of prosecution because she found the applicant had failed to appear for two scheduled interviews. On appeal, the applicant claimed that he did not receive timely notice of his first interview date because he had moved and that, although he had informed CIS of his current address, as noted above, CIS sent a second notice of interview to his prior address. The record includes a copy of a Form G-56 notice of interview, dated December 9, 2005, that was mailed to the applicant at his prior address, thus confirming the applicant's assertion on appeal. The record also reflects that CIS failed to notify the applicant at his address of record of its decision to deny his application. On January 9, 2006, CIS mailed that decision to the applicant's prior address.

In summary, the record reflects that CIS failed to update its records to reflect the applicant's address of record as of November 30, 2005, and thereafter failed to provide the applicant with proper notice regarding his responsibilities in the processing of his application. The applicant failed to attend his interview through no fault of his own, but rather through CIS error in failing to provide notice of the interview date to the applicant at his last known address. It is further error for the director to deem the application abandoned for lack of prosecution based on the applicant's failure to attend the interview, and the director's decision to deny the application on that basis is therefore withdrawn.

¹ Motions to reopen a proceeding or reconsider a decision on an application for permanent resident status under section 1104 of the LIFE Act are not permitted. 8 C.F.R. § 245a.20(c). The AAO may, however, sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

The case is reopened sua sponte, and the AAO's decision of October 11, 2007 is withdrawn. The case is remanded to the director so that the applicant may be given the benefit of an interview and a decision on the merits of his application for permanent residence under section 1104 of the LIFE Act. In the event that the director denies the application, the decision shall be certified to the AAO.

ORDER: The case is reopened. The AAO's decision of October 11, 2007 is withdrawn and the director's decision of January 9, 2006 is withdrawn. The matter is remanded to the director for appropriate action and decision consistent with the foregoing opinion.