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FILE:

MSC-01-345-61314

Office: NEWARK

Date:

MAR 06 2008

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 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 pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On September 8, 2006, the director denied the applicant's Form I-485, Application to Adjust Status, under Section 1104 of the LIFE Act based on inconsistencies in the applicant's testimony and on his application. On October 6, 2006, counsel for the applicant filed a motion to reopen, stating that Citizenship and Immigration Services (the Service) erred in denying the application. On August 31, 2007, the director issued a decision denying the applicant's motion to reopen. Counsel then filed a Form I-290B, Notice of Appeal, to appeal the director's denial of his motion to reopen.

Pursuant to the LIFE Act legalization provisions, an applicant's motion to reopen a proceeding or reconsider a decision shall not be considered. 8 C.F.R. § 245a.20(c). However, the Service director who denied the application may reopen and reconsider any adverse decision *sua sponte*. *Id.* In the instant case, counsel for the applicant submitted a motion to reopen within thirty days of the issuance of the denial notice. The director issued a decision on the merits of the motion, finding that the applicant failed to submit any new evidence in the case. Furthermore, the director adjudicated the merits of the application, finding that the applicant lacked credibility. The director concluded that the motion to reopen should be denied on this basis.

The director essentially reopened the denial decision *sua sponte* by readjudicating the merits of the application and finding that the applicant is not credible. The director erred in his denial of the motion to reopen and it is withdrawn. Therefore, at issue in this proceeding is the applicant's eligibility for permanent resident status under Section 1104 of the LIFE Act.

On appeal, counsel for the applicant asserts that the director's decision is erroneous and is based on misconceptions of facts and law. Counsel further asserts that the officer overlooked the applicant's travel with advance parole in 1997. Counsel resubmits copies of the applicant's previously submitted Form I-512, advance parole document, and passport. Counsel indicates on the Form I-290B, Notice of Appeal, that he will submit a brief within thirty calendar days. Counsel filed the Notice of Appeal on October 1, 2007. As of the date of this decision, the AAO has not received a brief or any other evidence from counsel. It should be noted that the AAO contacted counsel with a written notice on February 13, 2007 to request a copy of his brief, however counsel failed to respond to the notice.

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

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

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