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FILE: [REDACTED] Office: NEW YORK Date: MAY 28 2008  
MSC 01 307 60465

IN RE: Applicant: [REDACTED]

PETITION: 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 PETITIONER:



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.

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The applicant submitted insufficient evidence to credibly document his continuous residence in an unlawful status and his continuous presence in the United States during the relevant period. Specifically, the district director found that the evidence submitted in support of the application was insufficient to establish that he had entered the United States prior to January 1, 1982 and continuously resided in the United States in an unlawful status through May 4, 1988. Consequently, the district director issued a Notice of Intent to Deny (NOID) the application on April 4, 2006, and afforded the applicant 30 days in which to submit credible evidence to show that he had continuously resided in the United States during between January 1, 1982 and May 4, 1988. The NOID was returned to Citizenship and Immigration Services (CIS) unopened and marked as "unclaimed." Subsequently, the director denied the application on July 17, 2006.

On appeal, counsel for the applicant submits Form I-290B and claims that neither counsel nor the applicant received a copy of the NOID prior to the decision, and contends that as a result, neither was able to respond to or address the issues upon which the denial was based. Counsel requests that the matter be reopened, with a copy of the NOID sent to the applicant so he has an opportunity to address the basis for the denial.

Upon review, the AAO concurs with the contentions of counsel.

In the denial, the director stated:

Pursuant to [T]itle 8, Code of [F]ederal Regulations, Part 245a.20(a)(2), you were notified of our intent to deny your application on **April 4, 2006**. The proposed reason(s) for the Notice of Intent to Deny were provided to you at that time and you were afforded a period of thirty (30) days to provide additional evidence in support of your application.

The director did not restate the reasons for the denial of the application in the July 17, 2006 decision.

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing an applicant why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. See 8 C.F.R. § 103.3(a)(1)(i). In this matter, the NOID was returned to CIS, unopened and marked "unclaimed," on May 16, 2006. A review of the record indicates that the applicant's address of record was correct at the time of mailing. It is further noted that the director did not mail a copy of the NOID to counsel at the time it was mailed to the applicant. The director, therefore, was aware that neither the applicant nor counsel had been informed of the basis for the denial, and therefore had an affirmative duty to restate the reasons for the denial of the application in the July 17, 2006 decision. By failing to provide the specific reasons for the denial in the decision, the applicant was precluded from addressing the basis for the denial on appeal.

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. In this matter, however, the applicant and counsel were not informed of the specific reasons for the denial, and were therefore unable to address the basis for the director's decision on appeal.

Accordingly, the decision of the director is withdrawn. The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision to both the applicant and counsel. The new decision, if adverse to the applicant, shall be certified to this office for review.

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