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U.S. Department of Homeland Security
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Washington, DC 20529
MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

L2

FILE:

MSC 02 183 63867

Office: SALT LAKE CITY

Date: NOV 20 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied due to abandonment by the Director, Salt Lake City, Utah. A motion to reopen was filed, which was denied by the director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On December 21, 2006, the director denied the application due to abandonment because the applicant had failed to respond to the notices issued on February 24, 2006 and April 26, 2006, requesting that evidence be submitted to establish her continuous residence in the United States during the requisite period. In his denial notice, the director informed the applicant that she could file a motion to reopen under 8 C.F.R. § 103.5.

On January 18, 2007, a motion to reopen was filed. On April 30, 2007, the director issued a decision denying the motion to reopen as no evidence was submitted to support the motion.

Because the LIFE application was filed under section 245A of the Immigration and Nationality Act (the Act) we must look to the regulations that clarify the requirements for motions under section 245A of the Act. Pursuant to 8 C.F.R. §§ 103.5(b) and 245a.20(c), motions to reopen a proceeding or reconsider a decision shall not be considered. As such, the notice dated December 21, 2006 was, in part, erroneously issued.

On June 1, 2007, counsel filed a Form I-290B on the director's decision of April 30, 2007. However, there is no appeal rights on a motion filed under section 245a of the Act. Nevertheless, the record was forwarded to the AAO for adjudication. The director's error, does not, and cannot, supersede the regulation regarding the ability of the AAO to consider the appeal.

As such, the initial decision of the director will not be disturbed and the appeal will be rejected.

ORDER: The appeal is rejected.