

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

MSC 02 018 61151

Office: NEW YORK

Date: NOV 25 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.

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 by the Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the application because the applicant failed to appear for two scheduled interviews in connection with his application. The director deemed the application to be abandoned.

On appeal, counsel for the applicant contends that the applicant has already been interviewed in connection with his Form I-485 application and that he informed the service of his new address. Counsel states that the applicant filed a new Form I-687, Application for Status as a Temporary Resident. Counsel asserts that he advised the applicant to withdraw the Form I-687 application and "not worry about any interview date."

In the Notice of Decision (NOD), dated August 28, 2006, the director stated that the applicant did not submit a change of address. It is noted that the record contains a change of address letter from the applicant received on August 14, 2002; however, this error is found to be harmless. There is no evidence in the record that the applicant did not receive the notices from the director at his new address.

The issue in this proceeding is whether the applicant failed to appear for scheduled interviews in connection with his Form I-485 application. As counsel noted on appeal, the applicant was interviewed in connection with his Form I-485 application on March 2, 2004. The record also indicates that the applicant's presence was requested by the director on July 5, 2006. The notice specifically stated that the reason for the appointment is in connection with his Form I-485 application. The applicant was scheduled for a second interview on August 15, 2006. Again, the notice stated that the reason for appointment was in connection with his Form I-485 application. In the NOD, the director stated that the applicant failed to appear for both scheduled interviews and he did not provide a valid reason for his non-appearance.

On appeal, counsel contends that the scheduled interviews were related to the applicant's newly filed Form I-687, which he subsequently withdrew. However, as previously mentioned, the appointment letters specifically stated that the interviews were related to the applicant's Form I-485. Counsel's assertion is not accepted. The record does not contain a valid reason for the applicant's failure to appear.

Therefore, based upon the foregoing, the AAO agrees with the director's decision that the application be deemed abandoned and denied for lack of prosecution.

As stated by the director in her decision, a denial due to abandonment may not be appealed. 8 C.F.R. § 103.2(b)(15). Thus, the appeal must be rejected.

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