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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 03 239 60908

Office: HARTFORD

Date: SEP 15 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

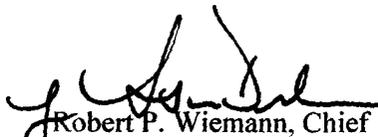
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

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

The district director denied the application because the applicant failed to demonstrate that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, applicant asserts that the director erred in denying her application. She contends that she has met her burden of proof by residing in the United States during the statutory period. She asserts that she lost some documents and personal belongings to prove her claim in a fire. She contends that the director did not give sufficient weight to the submitted evidence.

The regulations at 8 C.F.R. § 245a.20(a)(2) state, in pertinent part:

Denials. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. When an adverse decision is proposed, CIS shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision.

On May 27, 2003, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, as the beneficiary of her spouse's claim for class membership. On March 19, 2005, the director issued a Notice of Intent to Deny (NOID). The director determined that the applicant failed to provide a preponderance of evidence that would validate the applicant's claim of continuous unlawful status or continuous physical presence. The applicant was granted 30 days to respond to the NOID. On April 18, 2005, the applicant filed an I-290B, Notice of Appeal to the AAO, with the Hartford District Office.

In the Notice of Decision (NOD), dated February 4, 2006, the director stated that the applicant failed to respond to the NOID and denied the instant application. However, it is clear that the applicant's I-290B was received before the issuance of the NOD. In light of the evidence indicating that the applicant did, in fact, respond to the director's NOID, the director's decision is withdrawn.

Accordingly, the case will be remanded for the purpose of the issuance of a new final decision to the applicant, taking into consideration the applicant's I-290B statement. The new decision, if adverse to the applicant, shall be certified to this office for review.

ORDER: The director's decision is withdrawn. This matter is remanded for further action and consideration pursuant to the above.