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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: Houston

Date: JAN 06 2005

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 APPLICANT: Self-represented

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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director concluded the applicant had abandoned his application for permanent residence by failing to attend the scheduled appointment for the requisite fingerprints relating to his LIFE Act application and, therefore, denied the application.

On appeal, the applicant asserts that he informed the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) of the change in his address of record but the Service did not mail correspondence relating to the adjudication of LIFE Act application to his new address. The applicant submits documentation in support of his assertion.

Except as provided in 8 C.F.R. § 335.6, if an individual requested to appear for fingerprinting or for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment or interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13).

The record reflects that the applicant submitted a Form I-485 LIFE Act application to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on May 31, 2002. The record shows that the Service mailed an appointment notice to the applicant on July 21, 2003, scheduling him to appear for requisite fingerprints relating to his LIFE Act application at the Houston District Office on August 1, 2003. The record shows that the Service's notice was returned by the United States Postal Service (U.S.P.S.) marked as "undeliverable as addressed no forward order on file." In addition, the envelope contains the stamped notation "address correction service provided" along with the hand-written notation "P.O. Box 354."

The district director determined that the applicant failed to appear for his scheduled fingerprinting and concluded that the application had been abandoned. Therefore, the director denied the application due to abandonment pursuant to 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2). 8 C.F.R. § 103.2(b)(15).

A review of the record tends to support the applicant's contention that he did submit a change of address form to the Service prior to the issuing of the appointment notice cited above. Specifically, the applicant submits photocopies of change of address forms and corresponding postal receipts. Furthermore, the applicant's correct address was provided by an employee of the U.S.P.S. on the envelope in which the appointment notice had been mailed and subsequently returned to the Service. Therefore, it appears likely that the appointment notice had been mailed to an incorrect address and the district director erred in determining that the applicant had abandoned his application. The district director's error, however, does not, and cannot, supersede the regulation regarding the ability of the AAO to consider the appeal.

Accordingly, in order for the district director to consider the documentation the applicant submitted and previously discussed envelope in which the appointment notice had been mailed, this case will be remanded to the district director to treat the appeal as a motion. In the event that the application is subsequently denied again, this matter shall be certified to this office for review.

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