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U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES

Date: MAY 05 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:

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 Interim District Director, Los Angeles, California, 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 had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. Specifically, the district director found that the applicant had not established that his student visa had expired prior to January 1, 1982 or that he had violated that status during the required period of residency.

On appeal, counsel states that the district director erred in his decision because the applicant indicated on his I-687, Application for Temporary Residence, that his F-1 student visa expired on December 15 1980, and that he began working in violation of his visa in August 1980. Counsel asserts that the district director failed to analyze whether these statements on the I-687 met the burden of proof that the applicant's F-1 student visa either expired due to the passage of time prior to January 1, 1982, or that he violated his status by engaging in unauthorized employment.

In addition, counsel maintains that the procedures followed in the denial of the applicant's LIFE application violated the regulations in that he was not issued a notice of intent to deny, nor provided with 30 days in which to respond.

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.

A thorough review of the applicant's file confirms counsel's statement regarding the issuance of a notice of intent to deny. 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.