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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]  
MSC 02 148 62798

Office: DALLAS

Date: DEC 11 2007

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 Interim District Director, Dallas, 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 stated that the applicant had been absent from the United States during the relevant period for more than 45 days. On appeal, the applicant merely resubmits a copy of his approved claim for class membership.

The AAO notes for the record that the director's conclusions appear to be correct. The applicant indicates on his affidavit for class membership, which he signed under penalty of perjury on December 5, 1989, that he departed the United States on June 10, 1987 and returned on August 10, 1987.

The regulation at 8 C.F.R. §245a.1(c)(2) defines "continuous residence" as follows:

*Continuous residence*, as used in section 245A(b)(1)(B) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and of applying for permanent resident status, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period(s) allowed.

Since the applicant admits under penalty of perjury that he was absent from the United States for approximately sixty days at one time in 1987, it appears that he is ineligible for the benefit sought.

However, the regulation at 8 C.F.R. § 245a.20(a)(2) states, 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 that a notice of intent to deny was not issued in this matter prior to the denial on May 3, 2003. 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.

It should be noted that when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. See 8 C.F.R. § 103.3(a)(1)(i). Upon review of the

director's decision, the AAO finds that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record to establish the beneficiary's continuous unlawful residence and continuous physical presence.

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