

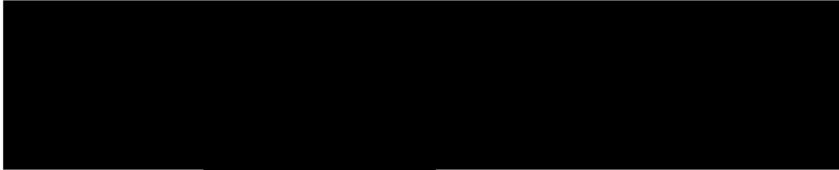
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U.S. Citizenship
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Services

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FILE: [Redacted]
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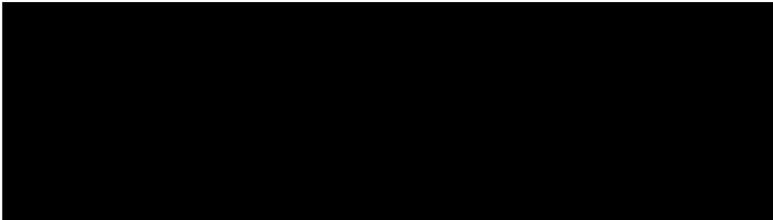
Office: Detroit

Date: JUN 06 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, San Francisco, California. The denial of the LIFE Act application was appealed to the Administrative Appeals Office (AAO) and dismissed. This case shall be reopened pursuant to the regulations at 8 C.F.R. § 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act (Act), and by extension section 1140 of the LIFE Act, and the previous dismissal shall be withdrawn.¹ This matter will be remanded for further action and consideration.

The district director determined that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he had been convicted of two felonies in the United States. *See* section 1104(c)(2)(D)(ii) of the LIFE Act. The district director further determined that the applicant's entry into the United States with a B-2 visitor's visa on February 14, 1987 was a lawful entry and had broken his continuous unlawful residence in this country from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, counsel contends that the applicant was not convicted of two felonies. Counsel asserts that the applicant's entry into the United States with a visa on February 14, 1987 was not lawful because the applicant was returning to an unrelinquished unlawful residence in this country, which he first established in March of 1981. Counsel includes copies of previously submitted documentation in support of the appeal.

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 review of both the electronic and administrative record reveals that a notice of intent to deny was never issued to the applicant or counsel. Accordingly, the decision of the district director is withdrawn.

It must be noted the record contains numerous court documents that show that the applicant was arraigned in the 19th District Court for the State of Michigan for a violation of section 750.249, Uttering and publishing, of the Michigan Compiled Laws, as well as a separate violation of section 257.902, False certification, of the Michigan Compiled Laws in case # [REDACTED] on September 5, 1995. The record reflects that the case against the applicant was assigned docket # [REDACTED]. The record shows that the applicant entered and successfully completed the Prosecutor's Pre-Trial

¹ The AAO dismissed the appeal as untimely filed. On motion, counsel submits evidence that the appeal was timely filed, but due to Service error, appeared to have been untimely. The AAO accepts the evidence of timely filing.

Diversion Program and that both of these charges were dismissed without prejudice in the Third Circuit Judicial Court of Michigan on January 3, 1997. The record contains a letter dated March 31, 2006 from the Office of the Wayne County, Michigan Prosecuting Attorney that specifically stated that the applicant's successful completion of the pre-trial diversion program did not involve a plea of guilty or no contest. Therefore, the applicant cannot be considered to have been convicted of either of these two charges within the meaning of section 101(a)(48)(A) of the Immigration and Nationality Act and *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

It must be further noted that the district director characterized the applicant's entry into this country with a B-2 visitor's visa in 1987 as a lawful entry despite the fact that he has always claimed he was returning to an unrelinquished and unlawful residence in the United States that had been initially established in 1981. Consequently, the applicant's entry into this country on February 14, 1987 cannot be considered as lawful and his residence for the requisite period must be examined in light of his claim that he was returning to his previous unlawful and unrelinquished residence in this country.

The case will be remanded for the purpose of reviewing the evidence provided by the applicant to demonstrate his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. If the district director concludes that the applicant is ineligible for any reason or that the submitted evidence is not sufficient to establish the applicant's continuous residence in this country for the requisite period, such issues must be specifically set forth in a notice of intent to deny prior to the issuance of a new decision to the applicant. The new decision, if adverse, shall be certified to this office for review.

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