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FILE: [REDACTED]  
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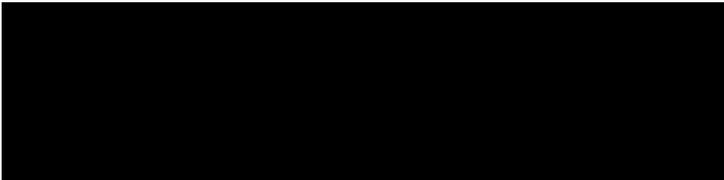
Office: HOUSTON

Date: MAR 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. 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, Houston, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO remands the case for further action and consideration.

The director denied the application because the applicant had failed to establish that he satisfied the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant concedes that he was unable to demonstrate an understanding of English or the history and government of the United States at his interviews, but requests that his case be reconsidered nonetheless.

8 C.F.R. § 245a.20(a)(2) requires that when an adverse decision is proposed, an applicant for LIFE legalization must be notified of the intention to deny the application and the basis for the proposed denial, and granted a period of 30 days to respond to this notice.

Here, the applicant was issued a decision on November 12, 2004<sup>1</sup>, but the record lacks evidence that the director notified the applicant of the intention to deny the application and the basis for the proposed denial, or granted the applicant 30 days to respond to such notice. The record contains an undated notice with a box checked informing the applicant that he had failed his second test of English ability/knowledge of U.S. history and government on January 5, 2004 and would not be interviewed again, but another box is also checked informing the applicant that he will be given another opportunity to be tested on his knowledge of U.S. history and government after six months had passed. Regardless, the notice did not inform the applicant that his application would be denied or grant him 30 days to respond.

In addition, although the director found the applicant ineligible for permanent resident status under section 1104 of the LIFE Act, the director failed to consider the applicant’s eligibility for adjustment of status to that of a temporary resident. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

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<sup>1</sup> The November 12, 2004 letter from the director to the applicant is titled Notice of Intent to Deny (NOID), but the word Intent has been crossed out on the various copies of the decision in the record. Furthermore, the letter states that “it is the decision of the Service to deny [the applicant’s] application,” and provides information to the applicant concerning his right to appeal the decision to the AAO. There is no other decision in the record, and the applicant has appealed the November 12, 2004 as a final decision. The AAO determines that the director issued a final decision on November 12, 2004 and not a NOID. The AAO reviews this case accordingly.

Accordingly, this case is remanded for the issuance of a new decision. If the director determines that the application should be denied, the director shall issue a Notice of Intent to Deny containing a detailed statement of the basis for the proposed denial, and the applicant must be granted a period of 30 days to respond to this notice. If, following this period, the director's final decision is adverse to the applicant, it shall be certified to this office. In addition, if the director determines that the applicant has not established eligibility under section 1104 of the LIFE Act, the director shall make a determination as to the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6.

**ORDER:** The application is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the applicant, is to be certified to the Administrative Appeals Office for review.