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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] MSC 02 313 60136

Office: SAN FRANCISCO

Date: MAY 02 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. Any further inquiry must be made to that office.

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, and is now before the Administrative Appeals Office on appeal. The case 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 since before January 1, 1982 through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.20(a)(2) provides that when an adverse decision is proposed, the Citizenship and Immigration Services shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted 30 days from the date of the notice in which to respond to the Notice of Intent to Deny.

The record indicates that on December 11, 2003, the director issued a request for evidence (RFE) to the applicant requesting additional evidence to establish his continuous unlawful residency in the United States during the required period. The letter informed that applicant that failure to submit the evidence would be grounds for denial based on lack of prosecution of the application. The applicant submitted additional documentation in response to the RFE. The director did not issue a new notice informing the applicant of the director's intent to deny the application as required by the above-cited regulation.

Accordingly, the case is remanded for the issuance of a Notice to Deny and for the entry of a new decision in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

On remand, the director should also address the applicant's criminal history. The record contains a Federal Bureau of Investigation (FBI) official rap sheet reflecting that on December 4, 1991, the applicant was charged with aiding and abetting in violation of 18 U.S.C. § 2(a) and illegal entry in violation of 8 U.S.C. § 1325. The record also contains a copy of the court judgment from the Southern District of Texas, reflecting that the applicant was convicted of aiding and abetting and was sentenced to a term of probation for three years. The record does not reflect a final disposition of the offense of illegal entry.

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