



U.S. Citizenship
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Services

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FILE:



Office: New York

Date: MAY 10 2007

MSC 01551 01150

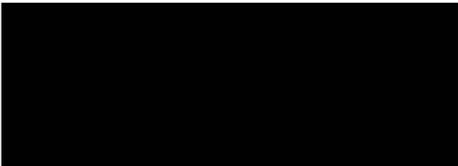
IN RE:

Applicant:



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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The district director determined the applicant had failed to appear for her second scheduled examination in order to demonstrate her compliance with the “basic citizenship skills” required under section 1104(c)(2)(E) of the LIFE Act. The district director concluded that the applicant had failed this second examination because she had not put forth a valid reason for her failure to appear and, therefore, denied the application pursuant to 8 C.F.R. § 312.5(b).

On appeal, counsel asserts that the applicant put forth a valid and reasonable request in asking that she be provided with another interview date as a result of her inability to attend the scheduled interview.

The regulation at 8 C.F.R. § 312.5(b) applies to aliens applying for naturalization as a citizen of the United States and is not applicable to aliens applying for permanent resident status under the LIFE Act. Rather, the applicable regulation for an applicant for permanent residence under the LIFE Act is contained at 8 C.F.R. § 245a.17(b) and this regulation does not contain any provision stating that an applicant would be considered to have failed the second examination because a valid reason for the failure to appear had not been advanced.

Additionally, the regulation at 8 C.F.R. § 245a.19(a) states in pertinent part:

All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center [or the appropriate District Director]. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution.

The record shows that the applicant appeared for her scheduled interview on August 13, 2004 and failed to pass tests demonstrating a minimal knowledge of both the English language and United States history and government. The record further shows that the applicant was subsequently rescheduled for a second interview on April 1, 2005. Just prior to this interview, both the applicant and counsel requested that the interview be rescheduled the applicant was “...not able to optimally appear...” The record does not contain any documentation that tends to establish that this request to reschedule the interview was based upon anything other than good faith representations that the applicant could not appear on the scheduled date. The record reflects that the district director neither expressly granted nor denied the request to reschedule the appointment. The district director’s power and authority to grant a request to reschedule an appointment is discretionary regardless of the reason for the request as 8 C.F.R. § 245a.19(a) clearly states, “An applicant failing to appear for the scheduled interview **may** [emphasis added], for good cause, be afforded another interview.” Even if the district director had expressly denied the applicant’s request to reschedule the appointment set for April 1,

2005, the application could not be denied for her failure to appear on such date as this was only the first occasion that she did appear for a scheduled appointment. Therefore, the district director's denial of the LIFE Act application shall be withdrawn.

The case will be remanded for the purpose of scheduling the applicant for an interview affording her another opportunity to take tests demonstrating a minimal knowledge of both the English language and United States history and government. If the applicant fails to appear for a second time for a scheduled interview, such action would warrant a denial of her application for lack of prosecution pursuant to 8 C.F.R. § 245a.19(a). Any 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.