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U.S. Citizenship
and Immigration
Services

L2

FILE: [REDACTED]
MSC 03 249 61757

Office: HARLINGEN

Date: DEC 02 2008

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 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had failed to attend two scheduled interviews. 8 C.F.R. § 245a.19.

On appeal, the applicant indicates that a brief and evidence will be forthcoming within thirty days of the receipt of his appeal. However, as of the date of this decision, neither the applicant nor counsel has submitted a statement, brief, or evidence in support of the appeal. Therefore, the record shall be considered complete.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a *preponderance of the evidence* that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.12(e).

The regulation at 8 C.F.R. §245a.19, **Interviews**, states:

- (a) All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed . . . 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 applicant was scheduled for interview on May 6, 2004, but the interview was rescheduled because his attorney was too busy to attend. On November 22, 2004, the applicant failed to appear for his interview. The applicant was rescheduled for an interview on February 25, 2005, but that interview was rescheduled at the applicant's request because his attorney was "too busy" to attend. On March 28, 2005, the applicant failed to appear for his second interview.

On February 1, 2006, the director denied the application because the applicant had failed to appear for two scheduled interviews.

On appeal counsel publishes a list of his clients and asks for an extension of time to file a brief in the current case because of his heavy caseload. The applicant filed an I-290, Notice of Appeal, on March 2, 2006, requesting an extension of period to 45 days and stating "A subsequent brief will follow, which will state the bases of our position." As of this date no further correspondence or brief has been received.

The regulation is clear, when two scheduled interviews are missed the application “shall” be denied for lack of prosecution. In any event public policy would weigh against the delay to other CIS applicants when a particular alien burdens the system with repeated requests for rescheduling.

The director’s decision was correct as a matter of law. Therefore the appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.