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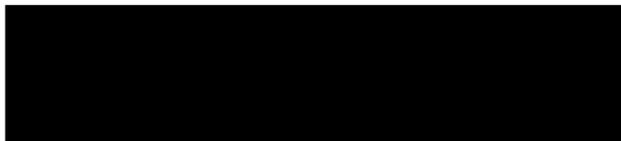
U.S. Department of Homeland Security
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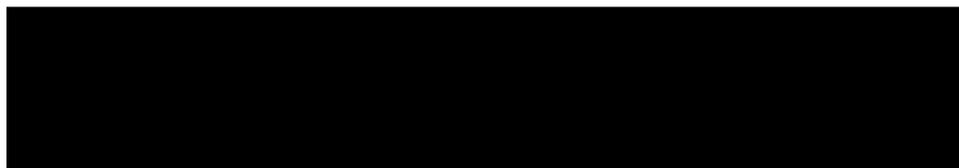
FILE: [Redacted] Office: NEW YORK
MSC 02 143 66345

Date: FEB 08 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. All documents have been returned to the National Benefits Center. 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, New York, New York, 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 failed to establish that he had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel submits a brief and an affidavit from the applicant. Counsel requests that the appeal be sustained and the application remanded so that the applicant may be afforded the opportunity to provide additional documentation.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(i). In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

On January 25, 1993, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident. On February 20, 2002, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

On February 1, 2005, the applicant was interviewed in connection with his I-485 application. At that time, the applicant stated, under oath, that he had entered the United States as a non-immigrant visitor on November 30, 1981, with authorization to remain until May 29, 1982.

On February 3, 2005, the district director issued a Notice of Intent to Deny (NOID), requesting the applicant to provide additional evidence in support of his application. Specifically, the district director noted that the applicant had been in lawful status from November 30, 1981, through May 29, 1982, and was, therefore, ineligible for Adjustment of Status under the provisions of the LIFE Act. The director provided the applicant with thirty days during which he might submit additional evidence of having resided unlawfully in the United States during the statutory period. The NOID was mailed both to the applicant at his address of record, as well as to his attorney of record at that time. The applicant failed to respond to the request.

The district director concluded that the applicant had failed to provide a response to the NOID, and had, therefore, failed to provide evidence of continuous, unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988. The director denied the application on April 12, 2005.

On appeal, the applicant's current counsel submits a brief and an affidavit from the applicant contending that the applicant could not respond to the NOID because the applicant had departed New York for Florida after his interview and before receiving the notice. Counsel states that because the applicant is again in New York, and represented by current counsel, that he is now willing to respond to the district director's request. However, on appeal, the applicant has failed to respond to the NOID and has not provided any new probative evidence.

It is concluded that the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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