

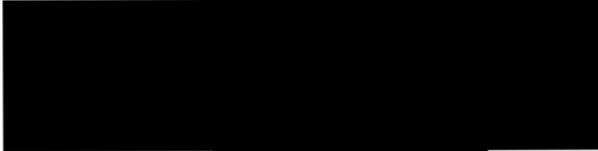
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U.S. Citizenship
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FILE:

MSC-02 241 60597

Office: SAN FRANCISCO

Date:

JUL 11 2008

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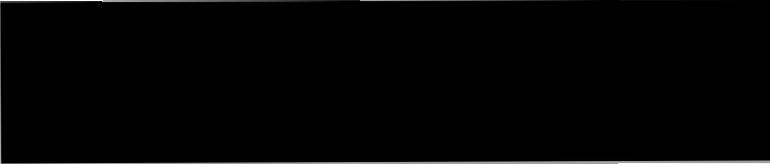
Applicant:



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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

The district director determined that the applicant failed to establish that she is eligible for permanent resident status under the LIFE Act. Specifically, the director noted that the applicant had entered the United States as a nonimmigrant on December 21, 1981, and was in status on January 1, 1982, and that she had subsequently departed and re-entered the United States on July 14, 1984, and March 10, 1985, as a nonimmigrant.

On appeal, counsel for the applicant states that the applicant did not receive proper notice of the district director's intent to deny the application.

Under 8 C.F.R. § 245a.20(a)(2), when an adverse decision is proposed in response to an application for adjustment of status under the LIFE Act, Citizenship and Immigration Services (CIS) shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the Notice of Intent to Deny (NOID). 8 C.F.R. § 245a.20(a)(2).

A review of the record reveals that the district director issued an Intent to Deny – Request for Evidence notice to the applicant on March 10, 2004. However, the notice did not specify the basis for the proposed denial. Accordingly, the decision of the district director will be withdrawn, and the case will be remanded to allow the district director to issue a proper NOID.

According to evidence in the record, the applicant entered the United States on December 21, 1981, on a visitor's visa. If the applicant claimed she was in an unlawful status prior to January 1, 1982, she should be given the opportunity to explain how her status was unlawful and whether her unlawful status was known to the government.

The applicant indicated in her affidavit dated July 20, 1990, that she was absent from the United States from December 1983 until July 1984. In a NOID, the district director should note the applicant's extended absence as another basis to deny her application.

If the district director finds that the applicant is ineligible for adjustment of status under the LIFE Act, he must first issue a NOID explaining the basis for the proposed denial and provide the applicant with 30 days to submit a response. Once the applicant has had an opportunity to respond to such notice, if the applicant has not overcome the district director's finding, then the district director must issue a new decision regarding the applicant's eligibility for adjustment of status under the LIFE Act. Any new adverse decision may be certified to the AAO.

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