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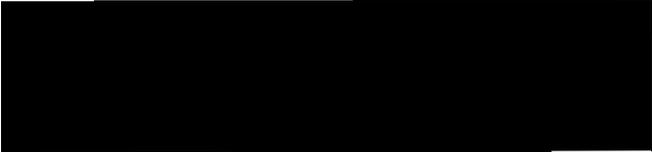
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**

L2



FILE:

MSC 03 245 64376

Office: LOS ANGELES

Date: **APR 28 2009**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

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, Los Angeles, California, and an appeal from that decision was summarily dismissed by the Administrative Appeals Office (AAO). The matter will be reopened and the appeal will again be summarily dismissed.

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. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on June 2, 2003. The director denied the application on February 20, 2007, on the basis that the applicant failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status from then through May 4, 1988. The applicant timely filed an appeal from the director's decision on March 15, 2007. On appeal the applicant submitted a brief statement asserting that his last, not first, entry into the United States was in 1987, and that he had demonstrated his eligibility for the benefit sought. The applicant did not submit any new additional documentation in support of the appeal.

On January 30, 2009, the AAO mailed a letter to the applicant allowing him 15 days in which to respond to numerous inconsistencies and omissions noted in the record that had not been addressed by the director. The AAO determined that the applicant had failed to respond to that request and summarily dismissed the appeal on March 27, 2009. However, a review of the record reflects that the applicant did respond to the AAO on March 6, 2009, prior to the AAO's summary dismissal of the appeal. Therefore the matter will be reopened *sua sponte* by the AAO.¹ However, in his response, the applicant did not adequately address all of the issues raised by the AAO.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. Without specifically identifying any errors in the director's decision, and in the absence of an adequate rebuttal by the applicant in response to the AAO's letter regarding inconsistencies and omissions noted in the record, the applicant's statement on appeal is insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted. Therefore, the appeal must, again, be summarily dismissed.

¹ The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See*, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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