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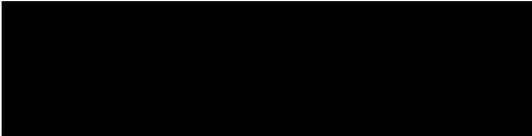
Office: SAN FRANCISCO

Date: JAN 08 2009

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 District Director (director) in San Francisco, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant, a native of India who claims to have lived in the United States since November 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 7, 2002. The director denied the application on January 30, 2008, on the ground that the applicant abandoned his case.

At his LIFE legalization interview on January 15, 2004, the applicant was issued an Intent to Deny – Request for Evidence (RFE), requesting evidence of his entry into the United States before January 1, 1982, his unlawful status and continuous physical presence in the United States from January 1, 1982 through May 4, 1988, his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, a list of all absences from the United States since January 1, 1982, a copy of his high school diploma, General Education Development (GED) and other educational certificates received in the United States, and copies of all arrest records and certified court dispositions of all arrests and a DMV printout. The applicant was given ninety days to respond. The applicant did not submit a response.

On September 14, 2004, the director denied the application based on the ground that the applicant failed to establish that he has continuously resided in the United States during the statutory period. The applicant timely appealed the decision to the AAO. In a decision dated April 19, 2007, the AAO found that the director failed to issue a Notice of Intent to Deny (NOID) to the applicant as provided in the regulations and remanded the case to the district for further action consistent with the AAO's directives.

On August 22, 2007, the director issued a NOID to the applicant indicating that the evidence of record is insufficient to establish that he resided continuously in the United States from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. The director also noted that the applicant had failed to submit a response to the RFE issued on January 15, 2004. The applicant was given 30 days to submit a response and/or additional evidence.

The record shows that the NOID was returned as undeliverable, and on October 24, 2007, the director resent the NOID to the applicant's counsel at his current address of record. The applicant failed to submit a response.

On January 30, 2008, the director issued a decision and denied the application due to abandonment. Specifically, the director noted that on January 15, 2004, the applicant was issued an RFE and failed to submit a response. On October 24, 2007, a NOID was issued to the applicant and he failed to submit a response or evidence. In his denial notice, the director informed the applicant that he could appeal the decision to the AAO on a Form I-290B, Notice of Appeal. The record shows that counsel filed an appeal with the district office in San Francisco. By a letter dated February 19,

2008, the director returned the appeal form because counsel had enclosed the filing fee which had been incorrectly stated in the director's decision. Counsel resubmitted the appeal with the correct fee and it was accepted on March 6, 2008.

The regulation at 8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen or reconsider. 8 C.F.R. § 103.2(b)(15).

This application was filed under section 245A of the Immigration and Nationality Act (the ACT). Therefore, we must look to the regulation that clarifies the requirements for motions under section 245A of the Act. Pursuant to 8 C.F.R. §§ 103.5(b) and 245a.20(c), motions to reopen a proceeding or reconsider a decision in this case shall not be considered.

In the present case, the original decision to deny the application due to abandonment was not appealable to the AAO. The director, in his denial notice, erroneously informed the applicant that he had 15 days to file an appeal (18 days if the notice was received by mail). The director's error, however, cannot, supersede the regulation regarding the ability of the AAO to consider the appeal.

As the applicant has no right of appeal to the director's decision in the present matter, the appeal will be rejected.

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