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FILE:

MSC 02 254 60004

Office: PHILADELPHIA, PA

Date: MAY 05 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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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 director, Philadelphia, Pennsylvania. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to submit sufficient, credible evidence to establish that he had resided continuously in the United States throughout the statutory period as required under section 1104(c)(2)(B) of the LIFE Act. The record indicates, for example, that on the Form I-687, Application for Status as a Temporary Resident, the applicant stated that between his November 20, 1980 entry into the United States and March 26, 1990, the date that he signed that form, he was absent from the United States on only one occasion, and that absence occurred during June/July 1987. Also, at the applicant's September 10, 1997 adjustment interview regarding the Form I-130, Petition for Alien Relative, filed by his U.S. citizen spouse, [REDACTED], the applicant indicated that his only absence from the United States between his entry in 1980 and his 1997 adjustment interview occurred during 1991. Yet, the record confirms that the following children were born to the applicant in Pakistan: a son, [REDACTED] born on October 10, 1983; a daughter, [REDACTED], born on December 20, 1985; and a son, [REDACTED], born on October 1, 1988. The director also indicated that the applicant testified at his 1997 adjustment interview that his wife, [REDACTED] the mother of these children, had never been to the United States. In addition, he testified that his wife, [REDACTED] had died because of a liver illness. Yet, evidence in the record indicated that the applicant presented a fraudulent death certificate for his first wife in order to be allowed to marry a U.S. citizen that he might gain lawful immigration status in the United States. The director indicated that even if she were to find the few pieces of contemporaneous evidence in the record related to the applicant's residence in the United States authentic, these were not sufficient to overcome the discrepancies in the record and establish that the applicant had resided in the United States continuously throughout the statutory period.

The AAO notes that the director listed the applicant's correct address on the notice of intent to deny but did not list the applicant's correct address on the notice of denial. It is not clear whether the envelope in which the director sent the applicant's copy of the notice of denial included the applicant's correct address. The Form I-290B, Notice of Appeal or Motion, does confirm that the applicant is in receipt of the notice of denial. The record also confirms that the director sent the notice of denial to the address of record for [REDACTED] who was at the time of the issuance of that decision, the applicant's representative of record. The record indicates that less than one week after the issuance of the notice of denial, the applicant submitted a Form G-28, Notice of Entry of Appearance of Attorney or Representative, for his present counsel, together with a request that [REDACTED] be released as his representative. This indicates that the applicant was aware of the contents of the notice of denial within a week of its issuance. Present counsel then filed an appeal approximately twenty-five days after the issuance of the notice of denial. In the appeal, counsel did not request additional time to submit additional evidence, nor did he choose even to utilize the additional 30 days to submit evidence which an applicant is granted as a matter of course. Thus, the record indicates that, even if the notice of denial was not sent directly to the applicant, the applicant was not prejudiced in these proceedings because of such error.

On appeal, the applicant did not address the points raised by the director in the notice of intent to deny and in the notice of denial. Instead, the applicant indicated through counsel that: because the address on the notice of denial is incorrect; because the salutation line on that notice does not include the applicant's correct name; and because the applicant's correct A-number is only listed at the bottom of the notice of denial, and an incorrect A-number is listed at the top of page 1 of that notice, that the substance of the notice of denial must be incorrect. Counsel indicated that, accordingly, the director should issue a new decision which corrects any substantive errors. Counsel did not allege any specific legal or factual error in the substance of the director's decision and did not submit additional evidence. The AAO will consider the record complete.

Any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv). A review of the decision reveals that the director accurately set forth legitimate bases for denial of the application. On appeal, the applicant has not presented additional evidence and has not addressed bases for denial. The appeal must therefore be summarily dismissed.

An application that fails to comply with the technical requirements of the law may be denied on those grounds by the AAO even if the Service Center or District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Beyond the decision of the director, the AAO finds that evidence in the record indicates that the applicant is not eligible to adjust under the late legalization provisions of the LIFE Act because the applicant is inadmissible under section 212(a)(6)(C) of the Act.

On May 28, 2002, the Form I-130 filed on the applicant's behalf was denied because the director found that the applicant's marriage to [REDACTED] was a fraudulent marriage which the applicant entered for the purpose of circumventing the immigration laws. In the course of those proceedings, the applicant provided statements to immigration officials which indicated that his marriage to [REDACTED] was *bona fide* so that he might gain lawful permanent resident status.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record indicates that, during the Form I-130 proceedings, the applicant willfully misrepresented a material fact, namely that he had entered into a *bona fide* marriage with [REDACTED] in order to gain lawful permanent resident status. Thus, he is inadmissible

under section 212(a)(6)(C) of the Act. An applicant may request a waiver of this ground of inadmissibility on the Form I-690, Application for Waiver of Grounds of Inadmissibility.

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 is admissible to the United States. *See* 8 C.F.R. § 245a.12(e). The applicant may only overcome this ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c). The applicant has not secured such waiver, and thus he remains inadmissible. The appeal must be dismissed on this basis, also.

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