



U.S. Citizenship
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Services

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FILE:

MSC 02 245 62984

Office: WEST PALM BEACH

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 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 director in West Palm Beach, Florida. The applicant filed an appeal with the Administrative Appeals Office (AAO). The AAO will withdraw the director's decision, and remand the application for further consideration and action.

The director denied the application on the ground of abandonment, stating that the applicant failed to appear for interview as scheduled on July 6, 2005, and did not request that the appointment be rescheduled.

The applicant, a native of Haiti who claims to have lived in the United States since September 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on June 2, 2002.

On July 8, 2005, the director issued a decision denying the application on the ground of abandonment, in accordance with 8 C.F.R. § 103.2(b)(13), which provides that:

[I]f an individual requested to appear . . . for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the . . . interview, or the applicant . . . has not withdrawn the application . . . the application . . . shall be considered abandoned and, accordingly, shall be denied.

According to the director, the applicant was requested to appear for an interview pertaining to his LIFE application on July 6, 2005, but the applicant did not appear on that date and did not request that the appointment be rescheduled.

The regulation at 8 C.F.R. § 103.2(b)(15) provides generally that “[a] denial due to abandonment may not be appealed, though an applicant may file a motion to reopen under 8 C.F.R. § 103.5.” Under the LIFE Act applicants have no such motion rights. *See* 8 C.F.R. § 245a.20(c). But the regulation does give “the Service director who denied the application” the authority to “reopen and reconsider any adverse decision *sua sponte*.” *See id.*

On August 16, 2005, the applicant filed a Form I-290B, Notice of Appeal, at the district office, which was subsequently forwarded to the AAO. On the Form I-290B, the applicant asserts that he did not receive the letter from the service requesting his appearance for an interview on June 6, 2005, and requests that the application be reopened.

A review of the record confirms that the interview notice for the applicant to appear for his interview on July 6, 2005, was mailed to an attorney – Mario M. Lovo. The record reflects that the interview notice was sent to the applicant at an incomplete address, which was returned as undeliverable. There is no evidence in the record that Mr. Lovo was the applicant's attorney of record at the time.¹ The record reflects that on May 21, 2005, Mr. Lovo returned the applicant's

¹ The record reflects that the applicant's attorney of record at the time was Edward Abramson.

interview notice to the director in West Palm Beach, Florida, notifying him that his office did not represent the applicant. There is no evidence in the record that the director sent another interview notice to the applicant at his complete address of record or to his attorney of record after receiving the letter from Mr. Lovo. Based on the documentation of record, therefore, the AAO is persuaded that the applicant did not receive notice from the district office to appear for an interview on July 6, 2005.

Accordingly, the denial of the application on the ground of abandonment was improper, and will be withdrawn. The matter will be remanded to the director for further consideration and action, in accordance with the authority invested in the director under 8 C.F.R. § 245a.20(c) to “reopen and reconsider any adverse decision *sua sponte*.”

In adjudicating the application for permanent resident status (Form I-485) on remand, the director will determine whether the applicant meets the requirement of continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The director shall issue a new decision containing specific findings which, if the application is denied, will afford the applicant the opportunity to present a meaningful appeal.

ORDER: The decision dated July 8, 2005 is withdrawn. The application is remanded to the director for the issuance of a new decision. If the decision is adverse to the applicant, it shall be certified to the AAO for review.