



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-G-P-

DATE: SEPT. 22, 2016

APPEAL OF LOS ANGELES, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR
ADJUST STATUS

The Applicant, a native and citizen of Mexico, seeks to adjust status to that of a lawful permanent resident (LPR) under the LIFE Act. *See* Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. No. 106-554, 114 Stat. 2763 (2000). The LIFE Act allows eligible foreign nationals who resided unlawfully in the United States during specified time periods and submitted membership claims in certain class-action lawsuits to become lawful permanent residents, if they are admissible to the United States, have not been convicted of a felony or three or more misdemeanors in the United States, and can demonstrate basic citizenship skills.

In April 2004, the District Director, Los Angeles, California, denied the application. Previously, in March 2004, the Director sent the Applicant a notice of intent to deny (NOID) the application, because the affidavits submitted did not contain sufficient information and were not accompanied by corroborative documents. The Applicant did not respond to the NOID. The Director then concluded the Applicant did not establish that he entered the United States before January 1, 1982, and continuously resided in the United States during the requisite statutory period. In 2007 we dismissed the Applicant's appeal as untimely filed. In March 2016, the Director dismissed the Applicant's subsequent motion to reopen as untimely filed, citing 8 C.F.R. § 103.5(a)(1)(i).

The matter is now before us on appeal. The Applicant indicates that he is appealing the Director's decision on his March 2016 motion to reopen. On appeal the Applicant claims that the Director erred by not explaining to the Applicant why the evidence he submitted did not establish his physical presence in the United States during the required statutory period. The Applicant also claims that the Director erred by not applying the proper evidentiary standard.

We find that the dismissal of the Applicant's motion to reopen based on 8 C.F.R. § 103.5(a)(1)(i) was in error. The Director's decision to dismiss the Applicant's request to reopen his case will be withdrawn and the matter will be remanded for proceedings consistent with this decision.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

(a) Motions to reopen or reconsider in *other than special agricultural worker and legalization cases* (emphasis added)--

(i) General . . . Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

As emphasized above, 8 C.F.R. § 103.5(a)(1)(i) is not applicable to legalization cases. The regulation regarding motions to reopen or reconsider legalization cases can be found at 8 C.F.R. § 103.5(b) which states, in pertinent part:

Motions to reopen or reconsider denials of special agricultural worker and legalization applications. Upon the filing of an appeal . . . the Director of a Regional Processing Facility . . . may *sua sponte* reopen any proceeding under his or her jurisdiction opened under Part 210 or 245a of this chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief.

Here, the Applicant's 2016 request that his case be reopened *sua sponte* includes new evidence. Pursuant to 8 C.F.R. § 103.5(b), the Director must review the Applicant's request to reopen his case on its merits, to determine whether the matter should be reopened or reconsidered *sua sponte*. The record does not reflect that the Director has done so.

ORDER: The decision of the District Director, Los Angeles, California, is withdrawn. The matter is remanded to the District Director, Los Angeles, California, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of R-G-P-*, ID# 09111 (AAO Sept. 22, 2016)