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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC CENTER



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]

Office: Los Angeles

Date: 03/12/2012

IN RE: Applicant: [REDACTED]

PETITION: 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded the applicant had not established that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000 and, therefore, denied the application. This decision was also based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel for the applicant asserts that the evidence provided by the applicant clearly meets his burden of proof of having continuously resided in the U.S. since prior to January 1, 1982, and that the denial of his application is therefore unfair. Counsel also submitted a separate statement in which he attempted to account for the applicant's absence from the U.S. in excess of 45 days.

An affected party filing from within the United States has 30 days from the date of an adverse decision to file an appeal. An appeal received after the 30 day period has tolled will not be accepted. The 30 day period for submitting an appeal begins 3 days after the Notice of Decision is mailed. 8 C.F.R. § 245a.20(b)(1).

If an applicant's last known address of record was outside the United States, and the Notice of Decision was mailed to that foreign address, the appeal must be received by the Service within 60 calendar days after service of the Notice of Decision. An appeal received after the 60 day period has tolled will not be accepted. The 60-day period for submitting an appeal begins 3 days after the Notice of Decision is mailed. 8 C.F.R. § 245a.20(b)(2).

The record reflects that the district director sent her Notice of Denial of November 20, 2003 to the applicant and to counsel at their respective addresses of record. The applicant's appeal was initially submitted directly to the AAO, rather than to the Los Angeles District Office, as required. A properly filed appeal was not received by Citizenship and Immigration Services (CIS) until January 12, 2004 - fifty-three (53) days after the decision was issued. The appeal was, therefore, untimely filed.

The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is rejected as untimely filed.