

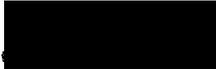


U.S. Citizenship  
and Immigration  
Services



LA

FILE:



Office: Los Angeles

Date:

OCT 29 2004

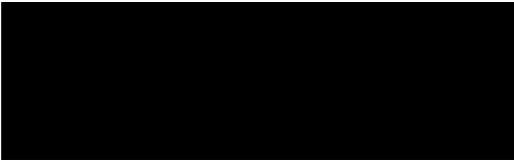
IN RE:

Applicant:



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:



PUBLIC COPY

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 she had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000 and, therefore, denied the application.

On appeal, counsel for the applicant asserts that the district office is disregarding its own internal memorandum of March 1989 in failing to consider the credibility to the affidavits submitted by the applicant in support of her claim to continuous residence in the U.S. during the period in question.

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's Notice of Decision of December 29, 2003 was sent to the applicant and to counsel. On appeal, counsel asserts that the decision was not received until January 9, 2004 because it was sent to an address from which the alien had moved more than 10 years previously. An examination of the record discloses that the decision had indeed been sent to an outdated address. Nevertheless, the record also indicates that the applicant's initial appeal was subsequently returned by the district office on February 13, 2004 for lack of proper fee. Citizenship and Immigration Services (CIS) did not receive the appeal, properly filed with the required fee, until 59 days after the director's decision on February 26, 2004. 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.