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U.S. Citizenship  
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Services



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MAR 02 2005

FILE:  Office: NATIONAL BENEFITS CENTER Date:

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. 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.

*[Handwritten signature]*

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 Director, Missouri Service Center, 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. The director also denied the application because the applicant was ineligible for adjustment to permanent resident status under the LIFE Act, having concluded the applicant was inadmissible as an alien who has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802), as set forth in section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA) or the Act. In addition, the director determined the applicant was also inadmissible as an alien whom a consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any controlled substance. Section 212(a)(2)(C)(i) of the Act.

On appeal, counsel for the applicant asserts that the applicant had been incorrectly advised by a prior attorney to plead guilty to the offense in question without having first been informed of the subsequent consequences to his immigration status.

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 director sent his decision of January 2, 2004 to the applicant at his most recent address of record. Citizenship and Immigration Services (CIS) did not receive the appeal until 35 days later on February 6, 2004. Therefore, the appeal was 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.