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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE:

MSC 01 300 60192

Office: HOUSTON

Date: NOV 27 2006

IN RE:

Applicant: [REDACTED]

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:

[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, Chief  
Administrative Appeals Office

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

The director denied the application because the applicant had failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.

On appeal, the applicant claims that the applicant is currently enrolled in an English language class and should be granted a "discretionary extension to allow him to acquire the necessary [E]nglish skills."

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).

The record reflects that the director sent the decision on September 17, 2004 to the applicant at his address of record. CIS received the appeal 62 days later on November 18, 2004. Therefore, the appeal was untimely filed.

Counsel contends, however, that the applicant's appeal was untimely filed because CIS sent the decision to the applicant's previous address of record. To demonstrate that CIS had knowledge of the applicant's change of address at the time the decision was issued, counsel submits a copy of a Form I-797D mailer dated July 21, 2004 and issued to the applicant by CIS at the applicant's current address. Based on the foregoing, the untimely filing of the appeal appears to be due to the director's error. Pursuant to 8 C.F.R. § 245a.20(c), the director may *sua sponte* reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. See 8 C.F.R. § 245.a 20(d).

In addition, it is unclear from the record if the director considered the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director *shall* consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

(Emphasis added).

Accordingly, should the director reopen this matter, and should the director also determine that the applicant has not established eligibility under section 1104 of the LIFE Act, the director shall make a

determination as to the applicant's eligibility for adjustment of status to that of a temporary resident pursuant to 8 C.F.R. § 245a.6.

**ORDER:** The appeal is rejected. The application is returned to the director for further action in accordance with the foregoing.