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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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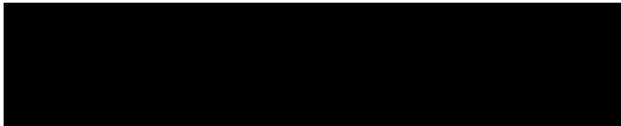
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FILE: [REDACTED]
MSC-01-278-60103

Office: LOS ANGELES

Date: **OCT 11 2007**

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

A handwritten signature in black ink, appearing to be "R. P. Wiemann".

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 of the Los Angeles District Office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b). The regulation at 8 C.F.R. § 245a.12(e) states that applicants for adjustment of status to that of a Legal Permanent Resident under this section bear the burden of establishing that they have resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence.

In her Notice of Intent to Deny (NOID), the director stated that the applicant did not meet his burden of establishing that he continuously resided in the United States for the duration of the requisite period. In saying this, she noted that the applicant's birth certificate indicates that he was born in Guatemala on [REDACTED]. The director noted that the applicant confirmed this was his date of birth at the time of his interview with a CIS officer. Therefore, the director concluded that the applicant had not established that he had entered the United States prior to January 1, 1982 as applicant's for permanent resident status must do pursuant to the regulation at 8 C.F.R. § 245a.11(b). The director granted the applicant thirty (30) days within which to submit additional evidence in support of his claim. The applicant did not submit additional evidence in response to the director's NOID. Therefore, he did not overcome her reasons for denial and she denied his application.

On appeal, the applicant states that he cannot provide proof that he entered the United States before January 1, 1982 because he was not born until [REDACTED] and did not enter the United States until 1986. He asserts that he has lived in the United States since 1986.

An affected party filing from within the United States has 30 days from the date of an adverse decision to file an appeal. 8 C.F.R. § 245a.2(p). An appeal received after the 30 day period has tolled will not be accepted. Pursuant to 8 C.F.R. § 245a.20(b)(1), whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. 8 C.F.R. § 1.1(h).

The instructions for filing Form I-290B delineates processing requirements, clearly stating that any form I-290B that is not signed or accompanied by the correct fee will be rejected. However, these instructions go on to say that if the first submission of an applicant's Form I-290B is timely, the applicant may correct the deficiency and resubmit the Form I-290B. However, an appeal is not considered properly filed until accepted by USCIS. The instructions go on to say that if an appeal is not filed timely, it will be rejected.

The record reflects that the director sent her decision of December 22, 2006 to the applicant at his addresses of record. Citizenship and Immigration Services (CIS) first received the appeal February 5, 2007, forty-five (45) days later on February 5, 2007. However, at that time, the Service did not accept the applicant's Form I-290B. The rejection notice in the record indicates the applicant's appeal was

rejected because the date on the check he submitted with his appeal was not current. The record shows that the applicant's resubmitted Form I-290B was received on February 21, 2007, sixty-one (61) days after the director issued her decision. Therefore, the appeal was untimely filed.

ORDER: The appeal is rejected as untimely filed.