



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-02-134-61828

Office: BALTIMORE, MD

Date: SEP 13 2007

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:



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 dark ink, appearing to read "Robert 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, Baltimore, MD, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded the applicant did not demonstrate eligibility for adjustment of status because he failed to establish that he was physically present in the United States since prior to January 1, 1982 or that he then resided continuously in the United States in an unlawful status from a date before January 1, 1982 through May 4, 1988. The director noted in his Notice of Intent to Deny (NOID) that at the time of his interview with an immigration officer on December 3, 2002, the applicant stated that he entered the United States sometime between 1981 and 1982. The director went on to say that the applicant did not present any documentary evidence establishing that he was physically present in the United States prior to January 1, 1982 or that he resided continuously in the United States since prior to January 1, 1982 and then through May 4, 1988. The director noted that the applicant's biological daughter was born in Colombia on May 24, 1984 and stated that this appeared to conflict with the applicant's assertion that he did not leave the United States at any time between 1981 and 1987. In the director's NOID, he states that the applicant will be given eighty-four (84) days to submit additional evidence in support of his application.

In his decision, the director states that the applicant was given thirty (30) days to submit additional evidence in support of his application and then goes on to say that the applicant submitted additional information from the applicant sixty-six (66) days after the date the director issued his NOID. It is noted that this is not consistent with the number of days the applicant was told he would be afforded in the director's NOID. The director notes that though the applicant submitted: thirty-one (31) envelopes that were date stamped from November 1981 until March of 1987 and sent to the applicant at an address in New York; seven (7) money orders sent to a [REDACTED] at the applicant's address; a receipt issued to the applicant from an airline dated August 5, 1981; and affidavits and letters pertaining to the requisite period, these documents did not establish, by a preponderance of evidence, that the applicant maintained continuous residence in the United States for the duration of the requisite period. The director notes that the applicant submitted an affidavit from his child's mother in which she stated that she was present in the United States from February 1982 and remained until 1984 in an attempt to explain how the applicant came to have a child who was born in Colombia in 1984 when he claims not to have left the United States from 1981 until 1987. However, the director notes that no additional evidence other than this affidavit was submitted by the applicant to establish that the mother of his child was in the United States during that time. The director further states that he did not find the evidence submitted by the applicant in response to his NOID to be credible. Therefore, the director denied the application.

On appeal, the applicant's attorney states that the applicant submitted additional evidence within the eighty-four (84) days afforded to him to do so as stated in the director's NOID. She also submits a brief asserting that the director incorrectly stated that the applicant had been given thirty (30) days to submit additional evidence. She goes on to say that documents submitted by the applicant in support of his claim of having maintained continuous residence during the requisite period are listed in 8 C.F.R. § 245a.2(d)(3) as forms of evidence that can be used to establish proof of continuous

residence in the United States during the requisite period. The applicant's attorney notes that the Service failed to indicate why the director found the evidence submitted by the applicant to not be credible.

On appeal, the applicant's attorney also submitted a Form I-290B, Notice of Appeal. The applicant's Form I-290B was not signed.

Regulations provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by the Department of Homeland Security regulations shall be executed and filed in accordance with the instructions on the form; and the instructions are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1). Form I-290B includes the following instruction:

Any Form I-290B that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-290B is deficient. If completed timely, an applicant may correct the deficiency and resubmit the Form I-290B.

In this case the applicant's Form I-290B is not signed by the applicant or his representative. As the appeal has not been signed and filed by the applicant or by any authorized representative, the appeal is deficient and has not been properly filed.

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 his decision of April 22, 2003 to the applicant and to counsel at their addresses of record. Citizenship and Immigration Services (CIS) received the appeal forty-five (45) days later on June 6, 2003. Therefore, the appeal was untimely filed.

ORDER: The appeal is rejected as being both improperly and untimely filed.