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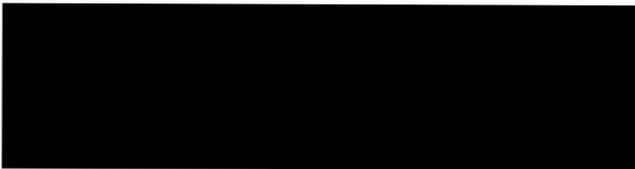
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File:

MSC 01 314 60435

Office: NEW YORK

Date: APR 21 2008

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).

IN 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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The district director denied the application, noting that the applicant had failed to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988 as required by section 1104(c)(2)(B) of the LIFE Act. Specifically, the director found that evidence submitted contained unresolved discrepancies which cast doubt upon the validity of the applicant's claims.

An affected party 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). For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is stamped as received by the service center or district office.

The record indicates that the director issued the decision on July 14, 2006. It is noted that the director properly gave notice to the applicant that he had 30 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on August 30, 2006, or 47 days after the decision was issued. Accordingly, the appeal was untimely filed.¹

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes that counsel for the petitioner filed an incomplete appeal on August 11, 2006, which was rejected due to counsel's failure to submit a signed Form I-290B, Notice of Appeal to the Administrative Appeals Office. Since the complete appeal was not properly filed until August 30, 2006, it must be rejected as untimely filed.