



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-02-232-67405

Office: LOS ANGELES

Date: **JAN 02 2008**

IN RE: Applicant: [REDACTED]

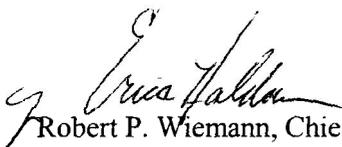
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


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

The director concluded the applicant did not establish that he was eligible to adjust status to that of a Permanent Resident. Specifically, in her Notice of Intent to Deny (NOID), the director noted the applicant did not appear to be eligible to adjust to Permanent Resident status pursuant to the regulation at 8 C.F.R. § 245a.10, as his record indicated that he had been convicted of three crimes that appeared on his Department of Motor Vehicles (DMV) record as misdemeanors. Therefore, the director determined that the applicant was inadmissible to the United States pursuant to the regulation at 8 C.F.R. § 245a.11(d)(1), as he had been convicted of three or more misdemeanors committed in the United States. The director noted that the applicant was previously requested by the Service to submit original court dispositions regarding these convictions and he failed to do so. The director afforded the applicant thirty (30) days within which to submit additional evidence in support of his application. In denying the application, the director stated that she reviewed the applicant's rebuttal to her NOID, but that her office found that their original determination that the applicant had been convicted of three or more misdemeanors was correct. She went on to say that in addition to her reasons for denying the applicant as stated in her NOID, the applicant failed to provide sufficient evidence that would allow him to meet his burden of establishing, by a preponderance of the evidence, that he maintained continuous residence in the United States for the duration of the requisite period. In saying this, the director stated that the applicant had not met his burden of establishing that he entered the United States before January 1, 1982, and then resided in an unlawful status.

On appeal, the applicant's attorney submits a brief in which she states that the director did not originally address the issue of continuous physical presence in her NOID. Therefore, the applicant was unable to respond to this issue in his response to the NOID. Counsel for the applicant goes on to state that the applicant submitted evidence that demonstrated that neither the California Department of Justice nor the Federal Bureau of Investigations (FBI) criminal record checks revealed a criminal record for the applicant. The applicant's attorney states that the Service did not supply the applicant with the evidence used to determine that he had been convicted of three or more misdemeanors and argues that a DMV record does not constitute proof of a criminal conviction under the Immigration and Nationality Act (Act) § 240(c)(3)(B).

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 record reflects that the director sent his decision of January 9, 2007 to the applicant and to counsel at their addresses of record. Citizenship and Immigration Services (CIS) received the appeal forty-three (43) days later on February 21, 2007. Therefore, the appeal was untimely filed and it must be rejected.

ORDER: The appeal is rejected as untimely filed.