

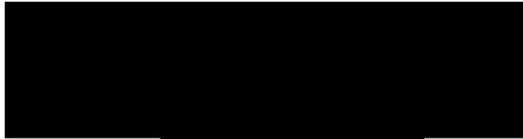


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

LL



FILE:



Office: CHICAGO, IL

Date:

JAN 02 2008

MSC-03-183-60221

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:



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 read "D. Ly".

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, Chicago, Illinois, 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 satisfied the “basic citizenship skills” that are required under section 1104(c)(2)(E) of the LIFE Act and initially denied the application on August 9, 2004.

It is noted here that the record shows the acting director of the Chicago District Office reopened her decision *sua sponte* on December 7, 2004 and then denied the applicant’s application for status as a temporary resident on May 18, 2006 because he failed to appear for his interview with a CIS officer. As the applicant did not submit an explanation for his absence or submit a request to reschedule the interview, the director found he had abandoned his petition pursuant to 8 C.F.R. § 103.2(b)(13). No appeal rights were given for this decision.

It is further noted that the record contains a previously issued decision from the AAO dated September 5, 2006. The AAO determined that the applicant had not filed timely and rejected his appeal at that time.

The applicant first submitted his Form I-290B Notice of Appeal to the Administrative Appeals Unit (AAU), mailing it on September 11, 2004. The record shows that the Service received this Form I-290B on September 14, 2004. On appeal, the applicant’s attorney submitted a statement saying that the applicant did meet the basic citizenship skills test as required under Immigration and Nationality Act (Act) § 312(a). It is noted here that section 312(a) of the Act requires individuals applying for permanent resident status to demonstrate both an understanding of the English language and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States unless an exception applies.

The record shows that the applicant did not demonstrate that he possessed a minimal understanding of ordinary English or knowledge and understanding of the history and government of the United States and therefore he did not meet the requirements of 8 C.F.R. § 245a.17 which specifies that applicants must possess knowledge and understanding in both of these areas in order to adjust status unless an exception under 8 C.F.R. § 245a.17(c) applies. The applicant was given two opportunities to demonstrate this understanding and knowledge and failed to do so on both occasions. It is noted that exceptions as defined under 8 C.F.R. § 245a.17(c) do not apply to this applicant, as he is not over sixty-five (65) years of age and he has not indicated that he is developmentally disabled as defined under 8 C.F.R. § 245a.1(v).

The record indicates that the applicant enrolled at an Adult Education Program subsequently to the director issuing his decision. A letter from City Colleges of Chicago indicates that this course began on September 7, 2004 and ended on December 16, 2004. However, it noted that there is no evidence in the record that suggests the applicant has yet achieved a high school diploma or general educational diploma (GED) from a school in the United States. The record shows that the Chicago District reopened the proceedings *sua sponte* on December 7, 2004. The director again denied the application after reopening it on May 18, 2006. The Administrative Appeals Office (AAO) then rejected the initial appeal filed on September 14, 2004 as untimely filed. The AAO noted in its

decision that the applicant was not entitled to file a motion to reopen or reconsider. See 8 C.F.R. § 103.3 (a)(x)(3)(iii) and 8 C.F.R. § 103.3 (a)(x)(3)(iv)(4)(iii) .

The applicant filed a second Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO) which the Service received on October 5, 2006. On this Form I-290B the applicant's attorney cites 8 C.F.R. § 103.5a which states in pertinent part that, "Service by mail is complete upon mailing." The applicant's attorney notes that the applicant's appeal was mailed on the thirty-third (33rd) day after the director's decision was issued. She argues that because the applicant mailed his Form I-290B on the thirty-third (33rd) day after the director's decision it was timely. However, it is noted here that 8 C.F.R. § 103.5a pertains to service by Citizenship and Immigration Services (CIS) on parties and attorneys rather than pertaining to service by parties and attorneys to CIS. It is also noted here that the applicant's attorney did not indicate that there was a delay in filing the applicant's initial Form I-290B that was beyond the control of the applicant. It is further noted that September 11, 2004 was a Saturday, and therefore the applicant would have filed timely if his appeal were to have been received by Monday, September 13, 2004. Though the record contains the envelope in which the applicant's Form I-290B was mailed, showing it was mailed on September 11, 2004 and a certified mail number [REDACTED], the United States Postal Service tracking verification website could not verify when the applicant's Form I-290B was delivered. The Service stamped it received on September 14, 2004. The applicant did not submit a certified mail receipt indicating that the appeal was received by September 14, 2004.

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), the appeal must be received by CIS within thirty (30) days; the thirty (30) day period for submitting the appeal begins three (3) days after the decision is mailed. 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 August 9, 2004 to the applicant at his address of record by certified mail. The record shows that he received the director's decision on August 13, 2004. Citizenship and Immigration Services (CIS) received the applicant's initial appeal thirty-six (36) days later on Tuesday, September 14, 2004. Therefore, the applicant's first appeal was untimely filed.

ORDER: The appeal is rejected as untimely filed.