



U.S. Citizenship
and Immigration
Services

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File:

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Office: NEW YORK

Date:

JUL 23 2008

MSC 01 310 61426

IN RE:

Applicant: [REDACTED]

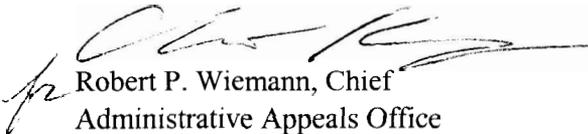
Application: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

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.


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.

The record indicates that the director issued the decision on April 19, 2006. It is noted that the director properly gave notice to the applicant with regard to the proper procedure for filing the appeal, and specifically stated in the April 19, 2006 decision that the applicant should file the appeal “with this office listed above.” The regulation at 8 C.F.R. § 103.2(a)(6) prescribes that all forms must be filed with the U.S. Citizenship and Immigration Services (USCIS) office with jurisdiction over the form and as indicated on the form’s instructions. Moreover, the instructions accompanying the Form I-290B state in Section 1 as follows:

You must file your appeal with the U.S. Citizenship and Immigration Services (USCIS) office that made the unfavorable decision within 30 calendar days after the service of the decision (33 days if your decision was mailed).

* * *

Do not send your appeal directly to the Administrative Appeals Office (AAO).

Emphasis added.

Despite these specific instructions, the applicant sent the appeal directly to the AAO, where it was rejected and returned to the applicant. The applicant subsequently resubmitted the appeal to the New York district office, erroneously contending that he had followed the instructions.¹ According to the date stamp on the Form I-290B Notice of Appeal, it was received by USCIS on May 24, 2006, or 35 days after the decision was issued. Accordingly, the appeal was untimely 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). For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

¹ The AAO notes that the applicant erroneously followed the guidelines set forth in Section 4 of instructions accompanying the Form I-290B. The instructions in this section pertain to the submission of a brief in support of the appeal, which USCIS requires to either be submitted with the Form I-290B, or within 30 days of the filing of the Form I-290B. If an applicant elects the latter, the brief should be submitted directly to the AAO. It appears that the applicant misunderstood these instructions.

As stated above, the record reflects that the director sent his decision of April 19, 2006 to the applicant at his address of record. USCIS received the appeal 35 days later on May 24, 2006. Therefore, the appeal was untimely filed.

ORDER: The appeal is rejected.