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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 03 189 61753

Office: CHICAGO

Date: FEB 03 2009

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:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "J. Grissom".

John F. Grissom, Acting 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, Chicago, Illinois. A motion to reopen was filed, which was denied by the director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On March 6, 2006, the district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988, and accordingly, denied the application.

An applicant affected by an adverse decision is entitled to file an appeal on Form I-290B, Notice of Appeal. 8 C.F.R. § 245a.20(a)(2).

On April 6, 2006, a motion to reopen was filed instead of the required Form I-290B. On December 11, 2006, the director issued a decision denying the motion to reopen.

Because the LIFE application was filed under section 245A of the Immigration and Nationality Act (the Act) we must look to the regulations that clarify the requirements for motions under section 245A of the Act. Pursuant to 8 C.F.R. §§ 103.5(b) and 245a.20(c), motions to reopen a proceeding or reconsider a decision shall not be considered. As such, the notice dated December 11, 2006, was erroneously issued.

On January 10, 2007, counsel filed a Form I-290B on the director's decision of December 11, 2006. However, there is no appeal rights on a motion filed under section 245a of the Act. Nevertheless, the record was forwarded to the AAO for adjudication. The director's error, does not, and cannot, supersede the regulation regarding the ability of the AAO to consider the appeal.

As such, the initial decision of the director will not be disturbed and the appeal will be rejected.

ORDER: The appeal is rejected.