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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: Denver

Date: JUL 13 2005

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 office that originally decided your case. If your appeal was sustained, or if your case 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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The district director denied the application because 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.

On appeal, counsel objects to the fact that he received the notice of intent to deny some three months after the notice had been issued by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). Counsel declares that the district director then failed to acknowledge in the notice of decision denying the LIFE Act application that he had submitted a response to the notice of intent to deny.

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)

If an applicant's last known address of record was outside the United States, and the Notice of Decision was mailed to that foreign address, the appeal must be received by the Service within 60 calendar days after service of the Notice of Decision. An appeal received after the 60 day period has tolled will not be accepted. The 60-day period for submitting an appeal begins 3 days after the Notice of Decision is mailed. 8 C.F.R. § 245a.20(b) (2).

The record reflects that the director sent the decision of February 20, 2004, to both the applicant and his attorney of record. CIS received the appeal 161 days later on April 14, 2004. Therefore, the appeal was untimely filed.

Counsel remarks on appeal relating to the notice of intent to deny have been considered. However, the fact that counsel received the notice of intent some three months after it had been issued and his response to this notice was not acknowledged by the district director did not relieve him or the applicant of the burden to file a timely appeal as required under 8 C.F.R. § 245a.20(b).

The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is rejected as untimely filed.