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

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22

FILE:



Office: HOUSTON

Date:

OCT 02 2007

MSC 02 247 64894

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. All documents have been returned to the office that originally decided your case. 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.

Michael T. Kelly
for 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1). The director further determined that the applicant had not established that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act.

On appeal, counsel states that the applicant arrived in the United States in 1981, and that there are no requirements for "an affiant to be present in a specific location in order for the contents of their affidavit to be given its due weight." Counsel submitted a brief and additional documentation in support of the appeal.

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 three days after the Notice of Decision is mailed. 8 C.F.R. § 245a.20(b)(1).

The record reflects that the director sent her decision of January 20, 2006 to the applicant at his address of record in the United States. The Form I-290B, Notice of Appeal to the Administrative Appeals Office, dated February 15, 2006 was submitted without the proper fee. The regulation at 8 C.F.R. § 245a.20(b) provides that "[a]ny appeal shall be submitted to the Service office that rendered the decision with the required fee." Citizenship and Immigration Services (CIS) received the properly filed appeal on March 6, 2006, 45 days after the director issued her decision. Therefore, the appeal was untimely filed.

Counsel asserts that the application should be timely filed because the director's notice stated that the filing fee was \$110.00. However, the fee for filing an appeal of the denial of a Form I-485 application was published in the federal register and became effective on October 26, 2005.¹ Therefore, counsel was on notice that the fee for filing the Form I-290B had increased.

ORDER: The appeal is rejected as untimely filed.

¹ 70 Fed. Reg. 56182, 56184 (Sept. 26, 2005).