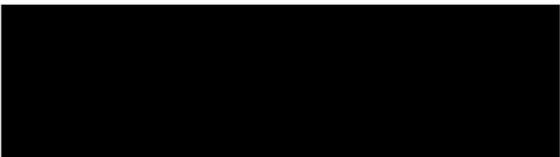




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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File:



Office: ATLANTA

Date: MAY 08 2008

MSC 02 281 62284

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).

IN BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

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, Atlanta, 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 she 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. Specifically, the district director found that the evidence submitted in support of the application was insufficient to establish that she had entered the United States prior to January 1, 1982 and continuously resided in the United States in an unlawful status through May 4, 1988.

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.

The record indicates that the director issued the decision on March 10, 2005. It is noted that the director properly gave notice to the applicant that she had 33 days to file the appeal. Additionally, the decision included the following instructions: **“An appeal in your case may be made to: Commissioner (Administrative Appeals Officer) on the enclosed Form I-290B. (A fee of \$110.00 is required).”** (Emphasis in original).

According to the initial date stamp on the Form I-290B Notice of Appeal, it was received by the AAO on April 15, 2005 without the required fee of \$110. On August 18, 2005, the appeal was returned to the applicant with instructions to resubmit the appeal with the required fee. Upon review, however, the original appeal, received on April 15, 2006, was received 36 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.