



U.S. Citizenship  
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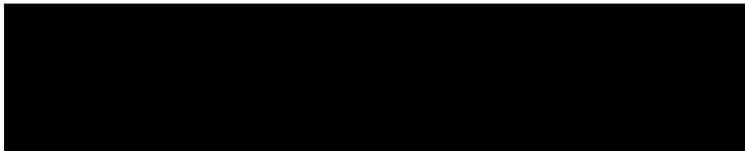
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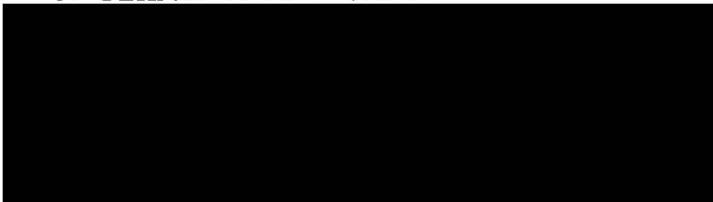
Date: **MAY 12 2008**

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. 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.

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 (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

The director denied the application on the ground that the applicant failed to establish that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act.

As provided in the regulation at 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the applicant in this case, a 33-day appeal period applies. If the last day of the appeal period falls on a weekend or a holiday, the deadline is extended until the next working day. *See* 8 C.F.R. § 1.1(h).

The decision by the New York District Office was issued on July 24, 2006. Under the regulations, therefore, the filing deadline for an appeal was Monday, August 28, 2006. As specified in the regulation at 8 C.F.R. § 103.2(a)(7), a properly prepared document is filed on the date it is received by Citizenship and Immigration Services (CIS).

An application or petition received in a [CIS] office shall be stamped to show the time and date of actual receipt and . . . shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

The applicant’s appeal (Form I-290B) bears a receipt stamp showing that it was received by the New York District Office on August 31, 2006, at 2:15 p.m. That was three days after the deadline for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that “[a]n appeal which is not filed within the time allowed must be rejected as improperly 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 District Director in New York. *See* 8 C.F.R. § 103.3(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO. Since the appeal was not timely filed with the New York District Office, it must be rejected.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

Beyond the decision of the director, the record shows that the applicant is ineligible for legalization under the LIFE Act because she has three misdemeanor convictions in the United States.<sup>1</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup> Court records from the State of New York show that the applicant was arrested on August 11, 2001 by the Woodbury Police Department in Orange County, New York, and charged with three violations of the New York Penal Code, including: (1) section 155.25, petit larceny, a class A misdemeanor; (2) section 170.10, forgery in the 2<sup>nd</sup> degree, a class D non-violent felony; and (3) section 190.23, false personation, a class B misdemeanor. On October 24, 2001, the criminal proceedings were terminated with the applicant's conviction, on all three counts, of disorderly conduct under section 240.20 of the Penal Code. Disorderly conduct is categorized in the Penal Code as a "violation," punishable by up to 15 days imprisonment.

An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Status. *See* section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).

"Misdemeanor" is defined in 8 C.F.R. § 245a.1(o) as a crime committed in the United States which is punishable by more than five days but no more than one year in prison. The classification of the applicant's offenses in New York's legal taxonomy as "violations" rather than "misdemeanors" is not relevant to the question of whether the offenses qualify as "misdemeanors" for federal immigration purposes. *See Yazdchi v. INS*, 878 F.2d 166, 167 (5th Cir. 1989); *Babouris v. Esperdy*, 269 F.2d 621, 623 (2d Cir. 1959); *United States v. Flores-Rodriguez*, 237 F.2d 405, 409 (2d Cir. 1956).

Thus, the applicant's conviction on three counts of disorderly conduct – each of which qualifies as a misdemeanor under 8 C.F.R. § 245a.1(o) because it is punishable by up to 15 days imprisonment – makes her ineligible for permanent resident status under the LIFE Act.