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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

[REDACTED]

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FILE:

[REDACTED]

Office: NEW YORK

Date:

**MAY 30 2008**

MSC 02 143 65560

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (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 he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(B)(i) and (C)(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 April 14, 2005. Under the regulations, therefore, the filing deadline for an appeal was Tuesday, May 17, 2005. 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 initially received by the New York District Office on May 24, 2005 – one week after the deadline of May 17, 2005. Moreover, a subsequent fee receipt stamp on the Form I-290B shows that the \$110.00 filing fee for the appeal was not received until June 15, 2005 – a full month after the deadline. Thus, the applicant did not file his appeal within the 33-day period prescribed in the regulations. 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.”

Under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2), 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 City. *See* 8 C.F.R. § 103.3(a)(1)(ii). The director declined to treat the late appeal as a motion, however, 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.

**ORDER:** The appeal is rejected.