



U.S. Citizenship
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FILE: [REDACTED]
MSC 01 339 61014

Office: SAN FRANCISCO

Date: JUN 28 2007

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:



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. Any further inquiry must be made to that office.


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, San Francisco, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The district director denied the application because the applicant failed to submit the court dispositions for *all* of his arrests, namely his 1987 arrest for driving under the influence.

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)

The record reflects that the director sent his Notice of Decision of March 28, 2005 to the applicant and to counsel at their addresses of record. The Form I-290B, Notice of Appeal is very clear in indicating that the appeal is *not* to be sent directly to the AAO. Counsel, nevertheless, sent the appeal to the AAO. The appeal is not considered properly received until it is received by the district office, which rendered the unfavorable decision. The appeal was properly received at the respective district office on May 9, 2005, 42 days after the decision was issued. Accordingly, the appeal was untimely filed, and must be rejected.

The record also reflects that a state court may have vacated one of the applicant's misdemeanor convictions due to an underlying legal defect in the criminal proceeding. If this is indeed the case, then the applicant would not be ineligible for adjustment of status to permanent resident under the LIFE Act as indicated in the director's decision. It is noted that, pursuant to 8 C.F.R. § 245a.20(c), the director may sua sponte reopen and reconsider any adverse decision. Additionally, the director may certify a decision to the AAO. 8 C.F.R. § 103.4; § 245a.20(d).

ORDER: The appeal is rejected as untimely filed.