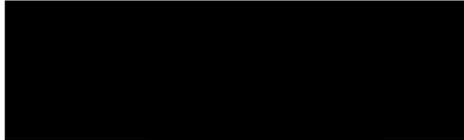


**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



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

**PUBLIC COPY**



L2

FILE:



Office: NEW YORK

Date:

**OCT 17 2007**

MSC-03-213-60870

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:

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded the applicant failed to maintain continuous physical presence in the United States during the requisite period. In saying this, the director noted that the applicant previously submitted a Form for Determination of Class Membership in CSS V. Thornburgh (Meese), signed on October 30, 1991, which shows that the applicant was absent from the United States from October 10, 1987 to December 12, 1987, a period of sixty-three (63) days. The notes in the record from the applicant's interview with a CIS officer on May 13, 2004 also reflect the dates of this absence consistently and a sworn statement signed by the applicant at the time of his interview also shows the same dates associated with that absence. The record does not indicate that the applicant has stated that his return to the United States was delayed because of an emergent reason that came unexpectedly into being. It is noted here that an applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b). The regulation at 8 C.F.R. § 245a.15(c)(1) further states that an applicant shall be regarded as having continuously resided in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days during the requisite period unless the applicant can establish that his or her return was untimely due to emergent reasons. In addition to the requirement for continuous residence, the regulation at 8 C.F.R. § 245a.16(b) requires that applicants must have maintained continuous physical presence in the United States from November 6, 1986 to May 4, 1988 with only brief, casual and innocent absences from the United States. Here, though the director noted that other documents in the record state that the applicant's absence at that time was for forty-two (42) days rather than sixty-three (63) days, the director found that doubt was cast on this assertion of a shorter absence from the United States. She went on to say that an absence of more than one month was not one that she regarded as brief, innocent and casual and caused the applicant to have failed to maintain both continuous residency and continuous physical presence in the United States during the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. Though the director noted that she received additional evidence in support of the application, she stated it was insufficient to overcome her grounds for denial as stated in her NOID. Therefore, she denied the application.

On appeal, the applicant asserts that though he knows that he did re-enter the United States on December 12, 1987, he believes that he left the United States on October 30 of that year. He states that he erred in recalling the dates during his interview and he erred at the time he completed the Form for Determination of Class Membership. He resubmits previously submitted affidavits showing this departure date.

An affected party filing from within the United States has 30 days from the date of an adverse decision to file an appeal. 8 C.F.R. § 245a.2(p). An appeal received after the 30 day period has tolled will not be accepted. Pursuant to 8 C.F.R. § 245a.20(b)(1), whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. If the last day of the period so computed falls on a Saturday, Sunday or a

legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. 8 C.F.R. § 1.1(h).

The regulation at 8 C.F.R. § 103.5(a)(iii)(A) requires that all appeals must be submitted in writing and signed by the affected party or the attorney or representative or record, if any. The instructions for filing Form I-290B delineates processing requirements, clearly stating that any form I-290B that is not signed or accompanied by the correct fee will be rejected. However, these instructions go on to say that if the first submission of an applicant's Form I-290B is timely, the applicant may correct the deficiency and resubmit the Form I-290B. However, an appeal is not considered properly filed until accepted by USCIS. The instructions go on to say that if an appeal is not filed timely, it will be rejected.

The record reflects that the director sent her decision of August 3, 2006 to the applicant by certified mail at his address of record. Citizenship and Immigration Services (CIS) first received the appeal timely, on August 28, 2006. However, the applicant's Form I-290B Notice of Appeal was rejected at that time because it did not contain a valid signature. The AAO finds that this rejection was made in accordance with the regulation cited above. The applicant resubmitted his signed form I-290B which was received by the Service on September 12, 2006, forty (40) days after the director issued her decision.

Therefore, the appeal was untimely filed and it must be rejected.

**ORDER:** The appeal is rejected as untimely filed.