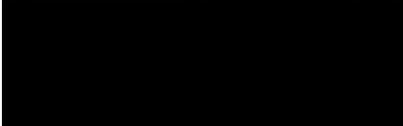


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUL 21 2003

File:



Office: Phoenix

Date:

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

PUBLIC COPY

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the district office that processed your case. If your appeal was sustained, or if your case was remanded for further action, the district office will contact you. 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 District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had been deported from the United States on September 10, 1986 and, therefore, had not continuously resided in this country from January 1, 1982 through May 4, 1988.

On appeal, the applicant states that he would like to stay in this country to provide for and support his family. The applicant submits affidavits of residence in support of his appeal.

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). Such an applicant shall be regarded as having resided continuously in the United States provided the applicant did not depart the country based upon an order of deportation. 8 C.F.R. § 245a.15(c)(3).

The record contains a separate file [REDACTED] which shows that in proceedings on March 25, 1987, the immigration judge ordered the applicant to be deported from the United States. This file contains a validly executed warrant of deportation showing the applicant was subsequently deported from this country to Mexico on March 25, 1987, and, therefore, did not maintain continuous residence for the required period.

Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Immigration and Nationality Act (INA) does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure. 8 C.F.R. § 245a.18(c)(1). Relief is provided within the LIFE Act for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. Clearly, regarding maintenance of continuous residence, it was not congressional intent to provide relief for absences under an order of deportation.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT. An alien who has been convicted of a felony or three or more misdemeanors in the United States is inadmissible and, therefore, ineligible for permanent resident status under section 1140(c)(2)(D)(ii) of the LIFE Act.

The record also contains court documents establishing that the applicant had been convicted in the Superior Court of Arizona, Coconino County, of a felony for driving a motor vehicle while under the influence of intoxicating liquor, the third such violation within sixty months. Therefore, the applicant is inadmissible under section 1140(c)(2)(D)(ii) of the LIFE Act.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.