



U.S. Citizenship
and Immigration
Services

L-2



FILE:



Office: Los Angeles

Date:

AUG 04 2004

IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. 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

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Los Angeles. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director decided that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant asserts she has maintained continuous physical presence in the U.S. since before January 1982, and that she has demonstrated that she is of good moral character.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his or her continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously 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 between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony taken at the time of her December 26, 2002 adjustment interview at the Los Angeles District Office, as well as information provided on the applicant's signed but undated Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA). In her sworn statement and on her I-687 application, the applicant indicated that, on August 6, 1982 she departed the U.S. for her native Belize in order to get married and give birth. She remained in Belize until November 3, 1982, when she returned to the U.S.

In her statement in rebuttal to the district director's notice of intent to deny, the applicant asserted that her interview statement was taken out of context and that she had actually been referring to having made illegal entries *into* the U.S. in July 1981, November 1982 and May 1987. The applicant further asserted that any absences from the U.S. during the period in question did not exceed 180 days. However, the applicant submits no additional independent, corroborative evidence to support these assertions. Moreover, as indicated above, the information obtained from the applicant's interview testimony regarding the dates and duration of her 1982 absence from the U.S. is supported by information provided in her own application Form I-687.

In the absence of additional evidence from the applicant, it is determined that the applicant's absence from the U.S. from August 6, 1982 to November 3, 1982 exceeded the 45-day period allowable for a single absence. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being."

In her oral testimony at her adjustment interview as well as at item 35 on her application Form I-687, the applicant indicated that her departure from the U.S. in 1982 was for the purpose of getting married and giving birth. While this suggests that there may have been a valid basis for the applicant's departure from the United States on this occasion, it also indicates that she intended to remain outside of the United States for as long as it took to complete the purpose of her trip. Moreover, the applicant has failed to provide any clear evidence of an intention to return to the U.S. within 45 days of her August 6, 1982 departure. Accordingly, in the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

The applicant has, therefore, failed to establish that she resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

The record also contains information indicating the applicant entered the U.S. on a B-2 nonimmigrant visitor visa on March 10, 1988. In her decision, the district director maintained that the applicant, at her adjustment interview, had confirmed that this was her *first* entry into the U.S. In rebuttal to the notice of intent to deny, however, the applicant denied this, asserting that she had first entered the U.S. illegally in July 1981 and had made several subsequent illegal entries to the U.S. since then. In any case, as the applicant is ineligible for permanent residence under the LIFE Act by reason of having exceeded the 45-day period allowable for single absences from the U.S. from January 1, 1982 to May 4, 1988, this issue need not be discussed further.

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