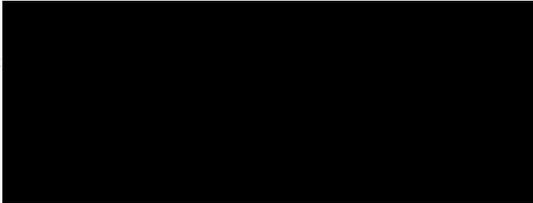




U.S. Citizenship
and Immigration
Services

12



FILE:



Office: National Benefits Center

Date:

AUG 25 2004

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The director concluded the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from January 1, 1982 through May 4, 1988 and, therefore, denied the application.

On appeal, counsel states the applicant submitted substantial credible documentation attesting to his unlawful residence in the U.S. from before January 1, 1982 through May 4, 1988. Counsel further states that the director failed to accord proper weight to the documents and that a waiver is not applicable as the applicant's re-entry without inspection occurred before April 1, 1997 when provisions of inadmissibility were modified.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. *See* section 1104(c)(2)(B)(i) of the LIFE Act and the regulations at 8 C.F.R. § 245a.11(b).

The record reflects that on November 28, 1983, the applicant appeared before an Immigration Judge and was found deportable. He was granted the privilege of voluntary departure with an alternate order of deportation to Nigeria if he failed to leave within that voluntary departure period. After being extended, the voluntary departure period ended on October 15, 1985. On May 8, 1986, an official of the United States Embassy in Lagos, Nigeria reported that the applicant executed the Immigration Judge's alternate order of deportation dated November 28, 1983 by self-deportation when he entered Nigeria on May 7, 1986.

Counsel argues that the applicant's inadmissibility for having been deported may be waived. However, Congress provided no relief for failure to maintain continuous residence due to a departure under an order of deportation under the LIFE Act. Relief was provided 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.

The assertion that the applicant is eligible to apply for permission to reapply for admission after deportation is without merit. The purpose of granting permission to reapply for admission after deportation is to waive inadmissibility. A waiver of inadmissibility would not cure a failure to maintain residence due to deportation.

An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside of the United States under an order of deportation. Section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. 1255(g)(2)(b)(i). A challenge to the Service's

implementing regulations was dismissed in *Proyecto San Pablo v. INS, et al.*, (Civ. No. 89-456-TUC-WDB), June 18, 1997. As indicated above, the applicant was outside of the United States under an order of deportation. Therefore, he is ineligible for adjustment to permanent residence under section 1104 of the LIFE Act.

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