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U.S. Citizenship
and Immigration
Services

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DEC 21 2004

FILE:



Office: HOUSTON, TEXAS Date:

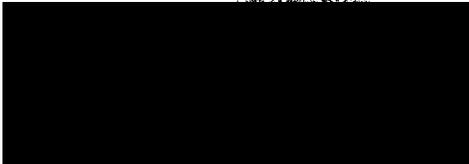
IN RE: Applicant:



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:



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 Interim District Director, Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The Interim District Director concluded that the applicant had not established that he 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. Therefore, the Interim District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. See *Interim District Director's Decision* dated August 1, 2003.

The Interim District Director's decision that the applicant was ineligible for permanent resident status under the LIFE Act was based on discrepancies between the applicant's statements and documentation submitted by the applicant and a thorough review of the applicant's Service file. On June 10, 2003, during his interview for adjustment of status, the applicant stated under oath that he only had one passport issued to him, he had only one absence from the United States since his entry in October 1981, he had only one spouse and that he had not applied for any other immigration benefit except under the LIFE Act.

The record of proceedings reveals that the applicant applied for an immigrant visa based on a previous marriage to a Lawful Permanent Resident (LPR). In addition on the Petition for Alien Relative (Form I-130) and on his immigrant visa application he stated that he first entered the United States with a B-2 visa in May 1985 and that he resided continuously in Colombia from 1970 to 1985.

On appeal the applicant submits an affidavit in an attempt to overcome the discrepancies found by the Interim District Director. Counsel submits the same documentation previously submitted in response to the Notice of Intent to Deny (NOID). In the affidavit submitted in response to the NOID, the applicant states that the discrepancies found during his adjustment of status interview were based on miscommunication between himself and the interviewing officer. In addition he states that he listed his place of residence as Colombia on his immigrant visa application due to bad advice from the person preparing the forms. Furthermore the applicant states that he departed the United States on April 20, 1985, and returned with a visitor visa on May 25, 1985. He further states that he departed in November 1987 and returned in December 1987. No statement or documentation was provided to show how he entered the United States in December 1987. On appeal the applicant reiterates that he entered the United States in 1981 and has attempted to legalize his status for a long time. He further states that he needs to continue his application for relief since many of his family members count on his financial support.

One of the requirements for an applicant to be eligible for adjustment to permanent resident status under the LIFE Act, is that he must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B) – Continuous Unlawful Residence

- (i) 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.

The "continuous unlawful residence" provision of the statute is further defined in the following pertinent regulations:

8 C.F.R. § 245a.15(c)(1) – Continuous residence

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.

Based on the record of proceedings it has been determined that the applicant failed to establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The applicant's statements regarding miscommunication do not overcome the documentary evidence and his own statements under oath as to his initial arrival. In addition, the applicant admitted to having departed the United States on April 20, 1985, and to returning in possession of a B-2 nonimmigrant visa. On May 25, 1985, the applicant was inspected and admitted as a visitor for pleasure. Therefore, by his own admission and confirmed by documents in the record, he was he was in lawful status for a period thereafter, breaking the continuity of his alleged unlawful residence in the United States between January 1, 1982 and May 4, 1988.

Based on the above fact, it is concluded that the applicant does not meet the statutory requirement, set forth in section 1104(c)(2)(B)(i) of the LIFE Act, of having maintained continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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