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

PUBLIC COPY

[redacted]

DEC 30 2004

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: Applicant: [redacted]

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:

[redacted]

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

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

The District Director determined 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 District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. *See District Director's Decision* dated February 26, 2004.

On appeal, counsel states that the District Director erroneously denied the application because the applicant has submitted credible evidence to establish his period of stay in the United States. Counsel further states that the inconsistencies in the applicant's testimony are based on the applicant's medications that affect his long-term memory. Counsel submits copies of the applicant's medical record in which it is stated that the applicant had suffered from clinical depression and anxiety and has been treated since 2002 with medications that cause memory loss and amnesia. In addition counsel states that if Citizenship and Immigration Services (CIS) had doubts about the medical affidavits submitted by the applicant the interviewing officer should have made attempts to contact the medical office to confirm the authenticity of the affidavits.

The record of proceedings reveals that the interviewing officer attempted to contact the medical office in order to verify the validity of the records submitted by the applicant but was unable to get a direct answer as to if the applicant has been their patient since January 1981.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, and his 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 in the regulations 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 District Director's decision that the applicant was ineligible for permanent resident status under the LIFE Act was based on discrepancies between the documentation submitted by the applicant and a thorough review of the applicant's Service file.

The record of proceedings reveals that the applicant submitted two separate Applications for Status as a Temporary Resident (Form I-687) containing discrepancies as to the date of his arrival in the United States and the addresses during the time required in order to adjust status under the LIFE Act. On one Form I-687 he stated that he entered the United States in February 1980 and on the other that he entered the United States in November 1981. In addition, during an interview dated October 8, 2003, the applicant stated that he was completely homeless from 1982 to 1988 and always in hiding. He also stated that he would perform odd jobs and would be paid in cash. He did not mention any specific company or individual for whom he worked. On both Forms I-687 he indicated several long-term addresses and employment as an accountant/clerk with a financial corporation and as a security guard during the period of time he claimed to be homeless and in hiding. An affidavit from [redacted] indicates that the applicant was attending school in the early 1980's in order to become a Licensed Vocational Nurse, the occupation he now claims on the Biographic Information (Form G-325) submitted with the application for adjustment of status. The AAO finds these discrepancies too significant to be attributed to drug induced memory loss particularly as the information supplied on appeal indicates that memory loss as a result of taking Xanax is "rare" and memory loss as a result of taking Halcion involves forgetting events after an injury. The letter from his doctor does not mention memory loss. The patient notes are basically illegible and do not appear to contain the patient's name. They are therefore of no probative value.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. As noted above an applicant for permanent resident status under section 1104 of the LIFE Act 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). On appeal the applicant did not overcome the discrepancies found in the record of proceedings.

The applicant has failed to establish that he 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, he 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.