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**U.S. Citizenship
and Immigration
Services**



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FILE:  Office: Houston

Date: JUL 02 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

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Interim District Director, Houston. 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 submits additional evidence in support of her application.

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 in a sworn, signed statement taken under oath and in the presence of an office of the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) at the time of her interview at the Houston District Office on December 20, 2002. In her statement, the applicant asserted that she departed the United States for her native El Salvador prior to December 15, 1981 and returned after February 20, 1982. The applicant further asserted that she had departed the U.S. for El Salvador for the purpose of giving birth to her daughter.

On appeal, the applicant submits two letters from acquaintances attesting to the applicant's character and to having known the applicant since 1982. Neither letter, however, addresses or resolves the question of the applicant's absence from the U.S. from December 1981 to February 1982.

Absent additional evidence from the applicant, it is determined that her absence from the U.S. from December 1981 to February 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 rebuttal to the director's notice of intent to deny, the applicant submits a personal statement attempting to address the question of her absence during the period in question. In her rebuttal, the applicant stated that the purpose of her departure to El Salvador in December 1981 was to be with her infant daughter, whose first birthday was on December 31, 1981. According to the applicant's statement, while in El Salvador, she went into labor with her second child on January 20, 1982 and was, therefore, unable to return to the U.S. for nearly two months. In support of her rebuttal statement, the applicant submitted birth certificates of her daughters, who were born December 31, 1980 and January 20, 1982, respectively. However, the applicant submits no independent, corroborative evidence to rebut her previous statement at her interview or to indicate that her giving birth to her second daughter had not been expected or anticipated at the time she departed the U.S. in December 1981.

In the absence of clear evidence that the applicant intended to return to the U.S. 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 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.