



U.S. Citizenship
and Immigration
Services



FILE:



Office: Denver

Date:

11/27/14

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 District Director, Denver, Colorado, 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. This decision was based on the district director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The director further determined that the applicant was ineligible to adjust to permanent residence pursuant to section 245A of the Immigration and Nationality Act (INA), because he did not meet the English and History/Government knowledge requirements of section 312 of the INA..

On appeal, the applicant indicates that he will be submitting additional evidence in support of his appeal.

It is noted that the director determined that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act because he did not meet the English and History/Government knowledge requirements of section 312 of the INA. While the AAO is unable to make a determination regarding the director's finding that the applicant is ineligible to adjust to permanent residence under the LIFE Act because he did not meet English and History/Government knowledge requirements, this issue is moot as the applicant is ineligible for the reasons to be discussed below.

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 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. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B)(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.

“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 180 days was based on the applicant’s own testimony in a sworn, signed statement taken at the time of his interview at the Denver district office on April 23, 2003, under oath and in the presence of an officer of the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS). In his sworn statement, the applicant indicated that he departed the United States on January 1, 1987, and that he did not return to this country until November 14, 1987. The applicant provided a copy of his Ivory Coast passport, which contains a page bearing a Service entry stamp reflecting his re-entry to the United States on this date. It must be further noted that the passport was issued on January 20, 1987, in Abidjan, Ivory Coast, and that the United States Visitor’s Visa contained therein was issued on July 16, 1987, also in Abidjan. These facts taken together are a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.

On May 8, 2003, the director issued a notice informing the applicant of the Service’s intent to deny his LIFE Act application because of his three hundred and eighteen (318) day absence from the United States in the requisite period. The applicant was granted thirty days to respond to the notice. However, the record shows that the applicant failed to submit a response and, therefore the director denied the application.

On appeal, the applicant states that he is trying to obtain additional evidence regarding his presence in the United States. However, as of the date of this decision, the applicant has failed to submit any independent, corroborative, contemporaneous evidence to rebut the content and substance of the sworn statement he provided to the Service of April 23, 2003.

In the absence of additional evidence from the applicant, it is determined that his 318 day absence in 1987 exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences. 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.”

At no point in this proceeding has the applicant put forth any reason for his 318 day absence from the United States in 1987. The applicant has failed to state any valid basis for his departure from this country or provide any clear evidence of an intent to return to the United States within 45 days. Accordingly, in the absence of 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 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.