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



LA

FILE:



Office: Houston

Date: JUL 20 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 District Director, Houston, Texas, 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).

On appeal, the applicant indicates that he was actually absent from the United States from April 1984 to July 1984, rather than April 1982 to July 1984, as he had declared in his previous sworn statement. The applicant submits additional documentation in support of his appeal.

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

Houston district office on November 25, 2002, 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 in 1982 in order to "finish my middle school" in Mexico, and that he did not return to this country until 1984.

On December 11, 2002, the director issued a notice informing the applicant of the Service's intent to deny his LIFE Act application because of his two year 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 asserts that he was actually absent from the United States from April 1984 to July 1984, rather than April 1982 to July 1984, as he had declared in his previous sworn statement. The applicant contends that he returned to Mexico in the period from April 1984 to July 1984, so that he could obtain his middle school diploma and return to the United States to continue his education. The applicant submits a statement from his mother to support his revised claim regarding his period of absence from the United States. However, neither the applicant nor his mother puts forth any reason as to why it took approximately three to four months for school officials in Mexico to provide him with his middle school diploma. Furthermore, the applicant's revised claim of absence of some three to four months in the period from April 1984 to July 1984, exceeds the forty-five day limit allowable for a single absence from the United States pursuant to 8 C.F.R. § 245a.15(c)(1). Moreover, 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 on November 25, 2002.

In the absence of additional credible evidence from the applicant, it is determined that his two year absence from April 1982 to July 1984 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."

In his sworn statement of November 25, 2002, the applicant indicates that he returned to Mexico from 1982 to 1984 to finish middle school. While this suggests that there may have been a valid basis for the applicant's departure from the United States, it also indicates the applicant intended to remain outside of the United States for as long as it took to complete the purpose of his trip. Moreover, the applicant has failed to provide any clear evidence of an intention to return to the U.S. within 45 days. Accordingly, in the absence of clear 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.