



U.S. Citizenship
and Immigration
Services

2004/10/09

LA



FILE: [Redacted]

Office: Los Angeles, California

Date: JUN 15 2004

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Los Angeles District Office. 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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director concluded that the record did not establish that the applicant entered the United States before January 1, 1982 and resided in this country in continuous unlawful status from then through May 4, 1988.

On appeal, the applicant asserts that the district director “erred in deciding that I have not established physical presence from 1/1/82 to 5/4/88.” She requests that “I am requesting . . . a waiver because my absence from the USA . . . [was] brief temporary trip resulting in extenuating circumstances outside my control.”

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 Director, Missouri Service Center, found that the applicant satisfied this statutory and regulatory criterion by filing a timely claim for class membership in CSS.

An applicant for permanent resident status under section 1104 of the LIFE Act must also establish that he or she entered the United States before January 1, 1982 and resided in this country in an unlawful status continuously from then through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). This “continuous residence” requirement is further specified in 8 C.F.R. § 245a.15(c)(1):

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 determined that the applicant failed to meet the statutory and regulatory criteria of “continuous residence” in the United States. The decision referred to the applicant’s interview for adjustment of status under the LIFE Act on October 29, 2003, in which the applicant stated that she traveled to her native Mexico in 1985 to have a baby and was absent from the United States for two months prior to the birth and three months after the birth – a total of five months. That was far in excess of the 45-day limit for any one absence from the United States, as specified in 8 C.F.R. § 245a.15(c)(1).

In her appeal the applicant asserts that her extended absence was due to “extenuating circumstances outside my control.” It is clear from the regulation, however, that more than “extenuating circumstances” are required. An absence of more than 45 days must be “due to emergent reasons” significant enough that the applicant’s return “could not be accomplished.” In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant’s return to the United States more than inconvenient, but virtually impossible. That was not the applicant’s situation in this case. In her interview the applicant stated that she went to Mexico two months before the birth of her child for the express purpose of having her baby in her native country. Even before her baby was born, therefore, the applicant’s absence from the United States had exceeded the 45-day limit allowed by 8 C.F.R. § 245a.15(c)(1). Moreover, this absence was not due to any “emergent reason” – *i.e.*, one that was unforeseen at the time of her departure – because the birth of her baby was the specific reason for

the applicant's absence from the United States. Furthermore, the applicant provides no explanation as to why her return to the United States could not be accomplished until three months after her baby's birth. The applicant's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events. However commendable the new mother's decision may have been to stay with her baby, the applicant's extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of her control that prevented her from returning far sooner.

Thus, the applicant's five-month stay in Mexico during 1985 interrupted her “continuous residence” in the United States. Therefore, the applicant has failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1).

Accordingly, 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.