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



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FILE: 

Office: Los Angeles

Date: **JUN 16 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, Los Angeles. 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 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 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 his 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 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 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 at the time of his interview at the Los Angeles legalization office on April 30, 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 asserted that he departed the United States for Mexico in 1982, where he remained for 60

days. The applicant further asserted that, later that same year (1982), he again departed the U.S. and remained in Mexico for another 60 days in order to visit his pregnant wife.

Subsequently, the applicant submitted a personal statement in rebuttal to the director's notice of intent to deny. In his rebuttal, the applicant recanted his previous sworn statement of April 30, 2003, and asserted that the information conveyed in this statement was incorrect by reason of the applicant's having misunderstood the questions posed to him by the interviewing Service officer. The applicant further asserted that, contrary to his sworn statement, he did not visit Mexico in 1982 but, rather, was visited in the U.S. by his wife for 2 months in July and August 1982, at which time she returned to Mexico to give birth to their son. The applicant acknowledged that he did leave the U.S. for Mexico in July 1985 but was only absent for a period of two weeks prior to returning to the U.S.

On appeal, the applicant submits additional evidence in support of his claim to have resided continuously in the United States in an unlawful status from prior to January 1, 1982 through May 4, 1988. This evidence consists of acquaintance affidavits and employment verification statements, attesting to the applicant's residence and employment during the period in question. However, none of the affiants addresses the issue of the applicant's absences from the U.S. during 1982. The applicant, on appeal, also provided photocopies of utility bills and medical statements dating from 1986 and thereafter. However, neither in his response to the notice of intent to deny or, subsequently, on appeal, does the applicant provide any independent, corroborative, contemporaneous evidence to support his appeal or to rebut the content and substance of his sworn statement to the Service of April 30, 2004.

In the absence of additional evidence from the applicant, it is determined that his two 60-day absences in 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 his sworn statement of April 30, 2003, the applicant indicates that his two 60-day trips to Mexico in 1982 were related to his wife's pregnancy. While this suggests that there may have been a valid basis for the applicant's departures 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.