



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: Dallas

Date: NOV 12 2014

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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, Dallas, 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 thirty (30) day limit for a single absence, as the district director stated was set forth in 8 C.F.R. § 245a.16(b).

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish continuous residence in the United States from prior to January 1, 1982 to May 1988. As to the applicant's absence from this country from November 1987 to January 1988, counsel contends that the district director utilized an erroneous standard in applying the thirty (30) day limit for a single absence set forth in 8 C.F.R. § 245a.16(b). Counsel submits copies of previously provided documentation in support of the appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act the applicant must establish continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and 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 [INA] 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.

Counsel is correct in stating that the district director erred in applying a thirty (30) day limit for a single absence as set forth in 8 C.F.R. § 245a.16(b). This regulation has since been amended and the previous reference to a “thirty (30) day limit” on absences has been removed. The current, amended regulation reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

As the district director applied an incorrect standard in determining that the applicant's absence interrupted his continuous residence in this country, the applicant's absence must now be examined utilizing the standard set

forth in 8 C.F.R. § 245a.15(c)(1), which provides a forty-five (45) day limit for a single absence from the United States, 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 applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA on or about July 18, 1991. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed only one absence from this country when he traveled to India to visit his father in the hospital from November 1987 to January 1988.

On July 15, 2003, the district director issued a notice informing the applicant of the Service's intent to deny his LIFE Act application because of his absence from the United States in the requisite period. In response, the applicant submitted a statement in which he declared that he learned that his father had been involved in a car accident on November 15, 1987. The applicant stated that he subsequently departed the United States for India on November 20, 1987. As noted above, the applicant indicated that he returned to the United States by January 1988 on the Form I-687 application. However, the applicant has failed to state the specific date he returned to the United States and he has failed to provide any evidence to determine the exact date he returned to this country. The applicant would have had to return to the United States by January 5, 1988, in order not exceed the forty-five day limit for a single absence set forth in 8 C.F.R. § 245a.15(c)(1). Without any definitive evidence to the contrary, it must be concluded that the applicant's absence from this country in the period from November 20, 1987 to January 1988, exceeded the forty-five day limit for a single absence contained in 8 C.F.R. § 245a.15(c)(1).

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 United States 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." The applicant has consistently admitted throughout these proceedings that he departed the United States for India on November 20, 1987, in order to visit his father in the hospital after he had been injured in a car accident. Therefore, it must be concluded that the applicant was aware of and had knowledge of his father's medical condition when he departed this country to travel to India on November 20, 1987. As such, it would have been reasonable for the applicant to anticipate that his father's course of medical treatment and period of recovery would take a considerable period of time. Consequently, an emergent reason cannot be considered to have caused any delay experienced by the applicant in returning to this country during the course of his absence from November 20, 1987 to January 1988.

The applicant has failed to establish that an emergent reason delayed his return to this country after being absent from November 20, 1987 to January 1988, and that such absence did not exceed the 45 day period allowable for a single absence pursuant to 8 C.F.R. § 245a.15(c)(1). As such, the applicant cannot be considered to have met his burden in establishing that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.