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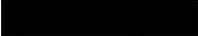


U.S. Citizenship
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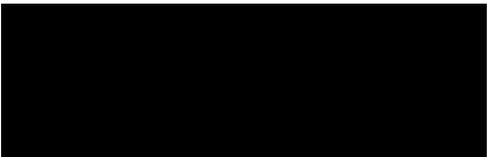


LA NOV 30 2004

FILE:  Office: LOS ANGELES, CALIFORNIA Date:
MSC-02-029-64277

IN RE: Applicant: 

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:


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, Los Angeles, California 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 and that the applicant was not continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, as set forth in 8 C.F.R. § 245a.11(c). Therefore, the District Director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application accordingly. *See District Director's Decision* dated February 26, 2004.

On appeal, counsel states that the director's decision is arbitrary and capricious since he ignored conclusive evidence of the applicant's presence in the United States.

In counsel's his brief and in an affidavit provided by the applicant, it is stated that the name on the pay stubs submitted by the applicant was never used by the applicant as an alias. The applicant states that his employer would have him sign some documents and then pay him in cash. This contradicts an affidavit submitted by the applicant's co-worker in which he states that he worked with the applicant from 1981 to November 1986 and that at that time the applicant was using the name Jose Roa.

Additionally, the applicant states that he was receiving mail at a different address from where he actually resided because he did not know how long he would be living at any place for any given time. According to an affidavit he submitted, the applicant and his spouse were residing at one address for four years continuously and moved to another address where they stayed for at least five years.

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 in the regulations 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 District Director's decision that the applicant was ineligible for permanent resident status under the LIFE Act was based on discrepancies between the documentation submitted by the applicant and a thorough review of the applicant's Service file. The applicant submitted a Form I-687 and documentation containing discrepancies as to his addresses during the time required in order to adjust status under the LIFE Act. Additionally, during his interview for adjustment of status the applicant stated under oath that he was paid in cash and did not use an alias that appeared on his pay stubs when his co-worker attested that he knew the applicant by this alias.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. As noted above an applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988, 8 C.F.R. § 245a.11(b). On appeal the applicant did not overcome the discrepancies found in the record of proceedings.

The applicant has 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.