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U.S. Citizenship
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FILE:



Office: Los Angeles

Date: AUG 30 2005

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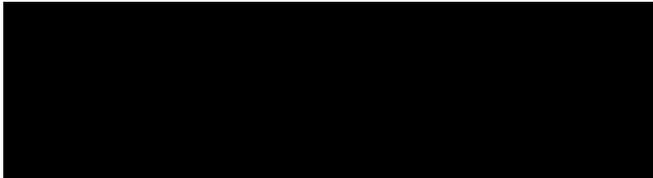
Applicant:



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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she 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 admitted that she had been absent from this country from July 15, 1987 to December 8, 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The district director further concluded that the applicant was not continuously physically present in the United States as required by 8 C.F.R. § 245a.16(b) because of her admitted absence from this country from July 15, 1987 to December 8, 1987.

On appeal, counsel asserts the applicant's absence from the United States from July 15, 1987 to December 8, 1987 was due to a medical emergency and, therefore, constituted a brief, casual, and innocent departure. Counsel includes copies of the same documents that had been previously submitted in response to the notice of intent to deny.

An applicant for permanent resident status 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

"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.

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. See 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) 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.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 Immigration and Nationality Act (INA) on May 2, 1990. 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 indicated that she had been absent from this country for an unspecified number of days from March 1984 to April 1984 when she gave birth to a child and visited family in Spain, and for 145 days from July 15, 1987 to December 8, 1987, when she traveled to Peru to "visit my son."

The record shows that the applicant subsequently filed her Form I-485 LIFE Act application on August 20, 2001. The record further shows that the applicant appeared for an interview relating to her LIFE Act application at the Los Angeles, California District Office on September 5, 2002. The notes of the interviewing officer reflect that the applicant testified under oath that she had been absent from the United States from July 15, 1987 to December 8, 1987. The applicant subsequently provided a signed sworn statement dated May 17, 2004, in which she reiterated that she had been absent from this country when she visited her son from July 1987 to December 1987.

Clearly, the applicant's admitted absence of 145 days from the United States from July 15, 1987 to December 8, 1987, exceeds the forty-five day limit for a single absence from this country in the period from January 1, 1982 to May 4, 1988 set forth in 8 C.F.R. § 245a.15(c)(1). Therefore, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because her absence of 145 days exceeded the forty-five day limit for a single absence.

In response to the notice of intent and on appeal, both counsel and the applicant assert that her absence from this country from July 1987 to December 1987 occurred as a result of "her son's medical emergency" and that she promptly returned to the United States when he recovered. The statements of counsel and the applicant only serve to reinforce the determination that the applicant's absence of 145 days from this country in 1987 exceeded the forty-five day period allowable for a single absence for the purpose of establishing continuous unlawful residence in the United States for the requisite period. 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."

Neither counsel nor the applicant provides any evidence to substantiate the claim that her absence from this country had been caused by a medical emergency involving her son. As discussed above, the applicant indicated that she visited her son in Peru from July 15, 1987 to December 8, 1987 on the Form I-687 without indicating that that the purpose of this visit had been prompted by a medical emergency. A review of the applicant's testimony at her interview on September 5, 2002 and her signed sworn statement dated May 17, 2004, does not reveal any declaration or statement that would indicate that her absence from the United States from July 15, 1987 to December 8, 1987 was the result of her son's medical condition. Neither counsel nor the applicant provides any explanation as to why her prior testimony did not include any mention of an illness or medical emergency in describing the purpose of her absence from this country in 1987. Without any direct and independent evidence to the contrary, it cannot be concluded that applicant's absence from the United States of 145 days from July 15, 1987 to December 8, 1987 was due to an "emergent reason" within the meaning of *Matter of C*, *supra*. The assertions of counsel do not constitute evidence. *Matter of Obaighena*,

19 I. & N. Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

Counsel is correct in concluding that a brief, casual, and innocent departure by the applicant from the United States in the period from November 6, 1986 to May 4, 1988 would not interrupt her continuous physical presence in this country. Even if the applicant's absence of 145 days in 1987 was determined to be brief, casual, and innocent for the purpose of establishing continuous physical presence in this country, such determination would have no impact on the finding she did not continuously reside in the United States in the period from prior to January 1, 1982 to May 4, 1988 because her absence exceeds the forty five day limit for a single absence.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has specifically admitted that she exceeded the forty-five day limit for a single absence from this country when she departed to Peru on July 15, 1987, and did not return to the United States until December 8, 1987. The applicant has failed to submit sufficient evidence to establish that an emergent reason delayed her return to the United States. The applicant has failed to establish having 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.