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U.S. Citizenship  
and Immigration  
Services

L2



FILE:



Office: LOS ANGELES

Date: DEC 21 2005

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. Any further inquiry must be made to that office.

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 Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. 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 the requisite period.

On appeal, counsel puts forth a brief disputing the director's decision.

"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 declaration submitted with his LIFE application. The applicant asserted that he departed the United States on May 14, 1982 to Mexico in order to get married and did return until October 1982.

On June 25, 2004, the applicant was advised in writing of the director's intent to deny the application. In her notice, the director indicated that due to the applicant's absence from the U.S. from May 14, 1982 to October 1982, he had failed to establish continuous residence in the United States.

The applicant, in response, asserted that he went to Mexico in May 1982 to get married and seek medical aid for his wife who was pregnant with his second child as "her pregnancy was in danger." The applicant further asserted that he remained in Mexico for over 90 days because his spouse's health "was in high risk." The applicant stated that he returned to the United States with his spouse in October 1982 and his children remained in Mexico with his parents.

On appeal, counsel argues that the director was in error not to make a credibility finding about the testimony of the applicant regarding his spouse's health issues. Counsel states that the director erred in his decision because there has to be a determination on credibility and cites *Vera-Villegas v. INS*, 330 F.3d 1222, 1225 (9<sup>th</sup> Cir. 2003).

Counsel contends that "no such finding was made by the director despite the fact that it was made at the time of the interview." It is unclear what counsel is trying to argue as the interviewing officer's notes do not elaborate as to the reason the applicant remained outside of the United States during the period in question.

The AAO agrees with counsel that the director, in denying the application, failed to make a credibility finding regarding the applicant's testimony as the decision did not set forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3. As such, the applicant's testimony will be considered on appeal.

While the applicant provided a declaration in an attempt to explain his five-month absence from the United States, he has not provided any evidence from his spouse's doctor to support his declaration. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While not dealt with in the 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."

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 his declaration, the applicant stated that he went to Mexico for the express purpose of getting married, which occurred on May 29, 1982, and to seek medical aid for his spouse. While this suggests that there may have been a valid basis for the applicant's departure from the United States, it also indicates the applicant intended to remain outside of the United States for as long as it took for his wife to recover. The applicant's continued stay in Mexico after the birth of his child, which occurred on September 2, 1982, would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant's decision may have been to stay with his wife and child, 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 his control that prevented him from returning far sooner.

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 a *continuous* unlawful status in the United States from May 14, 1982 through mid October 1982, as required 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). 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.