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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: Houston

Date: FEB 23 2005

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:



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.

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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, Houston, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director decided 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 determination that the applicant had exceeded the 45-day limit for single absences from the United States during the period in question, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel for the applicant submits a separate brief in response to the district office's denial notice.

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

Section 1104(c)(2)(C) – Continuous Physical Presence

- (i) In general – The alien must establish that the alien was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, except that -
 - (I) an alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States; and
 - (II) brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole.

The district director's determination that the applicant had been absent from the United States in excess of the time allowed for individual absences during the period in question was based on the contents of the applicant's sworn, notarized affidavit of November 26, 2002. In her affidavit, the applicant asserts that on September 2, 1984, she departed the U.S. for Pakistan. At the time of her adjustment interview, the applicant stated that her departure for Pakistan on this occasion was for the purpose of giving birth to her child. The

applicant's September 1984 departure on this occasion was also indicated on her Form I-687 Application for Status as a Temporary Resident under Section 245A of the INA.

In his notice of intent to deny, the district director concluded that the applicant's 53-day departure from the United States from September 2, 1984 to October 25, 1984 was in excess of the 45-day limit allowable for individual absences from the U.S. during the period from prior to January 1, 1982 to May 4, 1988. While it is acknowledged that the applicant exceeded the allowable 45-day absence limit, 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 response to the notice of intent to deny, the applicant submitted a subsequent affidavit dated January 27, 2004. In her affidavit, the applicant explained that she traveled to Pakistan to give birth because there was nobody in the U.S. that could assist her with looking after her child after she had given birth. The applicant further asserted that, subsequent to arriving in Pakistan, she began experiencing unanticipated complications with her pregnancy. As a result of these complications, the applicant was advised by her attending physician not to travel for at least six weeks. In support of her response, the applicant submitted a letter from Dr. Surendar Zia, consulting gynecologist and obstetrician at Rizwan Maternity Hospital, Karachi, Pakistan. In her letter, Dr. Zia affirms that after giving birth on September 24, 1984, the applicant required treatment for hypertension and post-partum complications. Following this treatment, Dr. Zia stated that she recommended bed rest combined with further treatment for a period of 6 weeks. According to the letter, the applicant was also advised by Dr. Zia to avoid travel during this 6-week rest and recovery period.

Based on the applicant's affidavit of January 27, 2004, which is supported by the letter from her attending gynecologist, it appears that the medical complications attending the applicant's pregnancy, in conjunction with her physician's recommendation against travel for a period of 6 weeks, were factors that clearly had not been previously anticipated by the applicant at the time she departed the U.S. for Pakistan on September 2, 1984. Such circumstances can reasonably be considered to conform to an emergent reason "which came suddenly into being," thereby delaying or preventing the applicant's return to the U.S. beyond the 45-day period. Accordingly, the applicant's 53-day absence from the U.S. in 1984 is considered to have resulted from an emergent reason as defined in 8 C.F.R. § 245a.15(c)(1), and is, therefore, not inconsistent with her claim to continuous residence in the U.S. during the period in question.

In the notice of intent to deny, it was also stated by the district director that, according to her affidavit of November 26, 2002, the applicant claimed to have first entered the U.S. in Buffalo, New York without inspection on December 20, 1981. In addition, the applicant indicated that subsequent re-entries to the U.S. on October 25, 1984, July 27, 1987 and December 30, 1990 also occurred at Buffalo, New York. However, according to the intent notice, Service records conflict with the applicant's statement in that they indicate that the applicant had made legal entries into the U.S.

In her subsequent affidavit of January 27, 2004, the applicant responds that her December 3, 1990 reentry, as well as a subsequent reentry in 1995, were both accomplished with valid visas and, therefore, constituted legal entries. In any case, the applicant's file does not include a copy of the records to which the district director referred in his intent notice. In the absence of such information, it cannot be determined with any specificity *which* legal entries on the applicant's part the district director was referring to in his notice of intent. Moreover, the issue raised in the notice of intent regarding the legality of certain entries on the

applicant's part does not, in any event, appear to impact adversely on the applicant's overall claim to continuous residence in the U.S.

In this instance, the applicant has submitted at least nine affidavits and third-party statements attesting to both her residence as well as his employment in the U.S. during the period in question. Affidavits in certain cases can effectively meet the preponderance of evidence standard. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished, including affidavits furnished by affiants who have provided their current addresses and phone numbers and have indicated their willingness to come forward and testify in this matter if necessary, may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant establishes, by a preponderance of the evidence, that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.