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U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE: [REDACTED]

Office: Houston

Date: JAN 24 2005

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]

PUBLIC COPY

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, Houston, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. 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 this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the inconsistencies in the applicant's testimony referenced in the notice of intent to deny resulted from understandable lapses in the applicant's memory due to his advanced age, and should not serve as a basis for implying a lack of credibility on his part or for denying his application.

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. 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 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).

In his notice of intent to deny, the district director indicated that at the time of his adjustment interview at the Houston District Office on March 10, 2003, the applicant testified under oath in the presence of an examining Citizenship and Immigration Services (CIS) officer and in the presence of counsel that, subsequent to his claimed initial entry to the U.S. in 1979, he made two departures from the U.S. to India for the purpose of visiting his family: (1) in 1983, during which he was absent for a period of 6 months; and (2) in 1986, during which he was absent for a period of 3 months. In addition, the applicant signed a separate, sworn statement at the time of his adjustment interview, in which he reaffirmed his 6-month and 3-month absences from the U.S. during 1983 and 1986. This information indicates that the applicant had been absent from the United States far in excess of the 45-day limit allowable for single absences from the U.S. It was also noted by the district director that this information provided at the applicant's adjustment interview was inconsistent with the information he had previously included on his application Form I-687, in which he specified his first and only absence from the U.S. following his initial entry occurred in November 1987, when he departed the U.S. for India to visit his family.

On appeal, counsel endeavors to attribute the inconsistency between the applicant's interview testimony and information included on prior documentation to the applicant's advanced age. However, neither counsel nor

the applicant have attempted to provide any further independent, corroborative evidence in response to the notice of intent or on appeal to resolve the issue of the applicant's 1983 and 1986 departures from the U.S. In the absence of such evidence, it is determined that the applicant's lengthy absences from the U.S. during the period from January 1, 1982 to May 4, 1988 far exceeded the 45-day period allowable for a single absence.

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." At the time of his testimony at his adjustment interview, supported by a separate, signed statement under oath, the applicant specified that his departures from the U.S. to India in 1983 and 1986 were for the purpose of visiting his family. As such, there is no indication that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the U.S. beyond the 45-day period.

The applicant has, therefore, 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.