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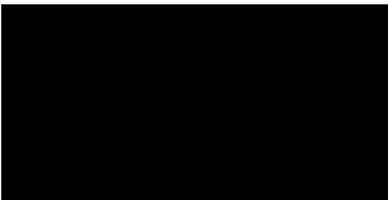
Applicant:



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. Any further inquiry must be made to that office.

  
Robert P. Wiegmann, 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 on appeal. The appeal will be dismissed.

The district director determined that the aggregate of all the applicant's absences had exceeded 180 days between January 1, 1982, and May 4, 1988. The director also determined that 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, and in a continuous physical presence from November 6, 1986 through May 4, 1988. Accordingly, the director denied the application.

On appeal, counsel asserts that the applicant's visits to and from the United States on a B-2 visitor visa established his intent to remain in the United States permanently. Counsel states that the applicant's absences were not intended to sever his continuous residence in the United States; he only returned to the Middle East for economic reasons.

"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 regulation at 8 C.F.R. § 245a.16(a) defined "continuous physical presence" as the alien who was continuously physically present in the United States from November 6, 1986 through May 4, 1988.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) 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 (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. 823 (Comm. 1988).

At the time of his interview on May 14, 2003, the applicant admitted in a sworn statement each departure and return to the United States as follows:

August 1981 until November 1981 for two and a half months  
September 1982 until April 1987 for four years and seven months

June 1987 until September 1988 for one year and three months  
November 1988 until December 1989 for one year  
January 1990 until March 1990 for two months

The applicant asserted his purpose for each departure was based on employment overseas, and each time he entered the United States with a B-1 or B-2 non-immigrant visa.

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 8 C.F.R. § 245a.11(b).

The record contains a copy of the applicant's Philippine passport, which reveals that on August 12, 1981, the applicant was issued a: 1) B-1 non-immigrant visa valid until November 11, 1981; 2) B-1/B-2 non-immigrant visa on November 21, 1981 valid until February 20, 1982; and 3) B-2 non-immigrant visa on September 1, 1982 valid until November 30, 1982. The record reflects that the applicant lawfully entered the United States on August 14, 1981, November 30, 1981, and September 29, 1982.

The applicant's authorized stay with a visitor's visa extended subsequent to January 1, 1982. Counsel does not provide any evidence indicating that the applicant had a shorter period of time or that he violated his lawful status as a non-immigrant visitor in any other manner, and such unlawful status was known to the Government as of January 1, 1982. It is determined that the applicant was in a lawful nonimmigrant status prior to January 1, 1982, and during September 29, 1982 through November 30, 1982 and, therefore, he has failed to meet the regulatory requirement.

The applicant's September 1982, and June 1987 departures exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences. Based on the applicant's testimony, his prolonged absences from the United States were not due to "emergent reasons." Further, the applicant has failed to establish continuous physical presence, as he was only present in the United States for one month (May 1987) during the requisite period.

Accordingly, the applicant has failed to establish that he 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 has also failed to established his continuous physical presence in the United States from November 6, 1986 through May 4, 1988, as required under section 1104(c)(2)(C) of the LIFE Act. Therefore, the applicant 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.