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U.S. Citizenship
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FILE:



Office: SACRAMENTO

Date: JUN 14 2005

IN RE:

Applicant:



APPLICATION:

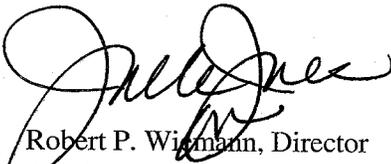
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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. Wisniewski, 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, San Francisco, California, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the director abused his discretion in finding that the applicant could not satisfy presence under a 2003 Circuit Court decision, *Vera-Villegas v. INS*, CDOS June 5, 2003, 9th Cir. 2003. Counsel further argues that no explanation is given as to why the testimonies of the affiants were not believable.

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

As evidence to establish her residence in the United States, the applicant submitted a letter from [REDACTED] of St. Elizabeth Parish in Oakland, California who asserted that the applicant has attended services for a number of years since 1981. The pastor also asserted that the applicant attended services regularly between November 1986 and May 1988. The letter, however, has little probative evidence or evidentiary weight as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. Nevertheless, the applicant has submitted sufficient evidence to establish she resided in the United States since before January 1, 1982 through May 4, 1988. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

It is noted the record does not support the director's assertion that the applicant failed to mention her 1984 departure from the United States. Item 35 of the Form I-687 application signed by the applicant on October 5, 1989 lists a 1984 departure (January 10, 1984 to February 6, 1984) along with 1985 and 1988 departures from the United States.

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).

The applicant has indicated on numerous documents that she entered the United States in October 1985 (specifically, October 15, 1985) with a B-2 non-immigrant visa. The record contains a copy of the applicant's Mexican passport which reveals that on October 3, 1985, the applicant was issued a B-2 multiple entry non-immigrant visa valid until October 2, 1986. As such, at issue in these proceedings is whether the applicant meets the guidelines of a *LULAC* class member.

A *LULAC* class member is an alien who attempted to file a completed application and application fee with a representative of the legacy Immigration and Naturalization Service (INS) including a Qualified Designated Entity (QDE), but had the application and fee refused by that representative because she had traveled outside of the United States and returned with a visitor's visa, student visa, or any other type of visa or travel document, and was otherwise eligible for legalization.

Item five of the Affidavit for Determination of Class Membership asked, "have you ever applied for legalization" of which applicant indicated "no." As the applicant did not attempt to file a completed application, a representative of the legacy INS or a QDE never refused her application because she reentered the United States with a visitor's visa. Therefore, the applicant was in a *lawful* nonimmigrant status on October 15, 1985, and has failed to meet the regulatory requirement.

Accordingly, the applicant has failed to establish that she resided in a 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. 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.