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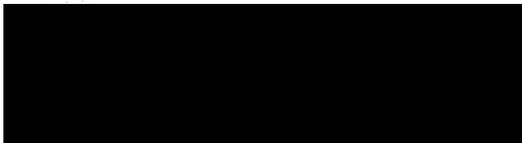
Office: Los Angeles

Date:

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.

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, Los Angeles, and the appeal was subsequently dismissed by the Administrative Appeals Office (AAO). The case has been reopened *sua sponte* and is again before the AAO on appeal. The appeal will be dismissed.

The district director denied the application on August 1, 2003 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 applicant's absence beyond the requisite 45-day limit was necessitated by circumstances beyond his control, and that this should have been taken into account by the district director before denying the application.

The applicant's appeal of the district director's decision was originally dismissed by the AAO on October 29, 2004 as being untimely filed. It was subsequently determined, however, that counsel's appeal had in fact been filed within the time period allowed. In light of that, the case has been reopened *sua sponte* by the AAO pursuant to 8 C.F.R. § 103.5(b).

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 the notice of intent to deny, the district director indicated that, at the time of his February 24, 2003 adjustment interview at the Los Angeles District Office, the applicant testified under oath in the presence of an examining Citizenship and Immigration Services (CIS) officer that in December 1987, he departed the U.S. for Canada, where he remained for 6 months and did not return to the U.S. until mid-June 1988.

This information, based on the applicant's own testimony at the time of his adjustment interview, indicates that he had been absent from the United States far in excess of the 45-day limit allowable for single absences from the U.S. However, while not dealt with in the district 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.” At the time of his testimony at his adjustment interview, the applicant stated that, while in Canada, he married his wife but was obliged to remain in Canada until he was able to locate someone who could escort him and his wife across the border. In rebuttal to the notice of intent to deny, the applicant acknowledged having informed the interviewing officer that he was absent for at least four months, but emphasized that the absence resulted from having to make the necessary arrangements before being able to bring his wife to the U.S.

While there may have been a valid purpose to the applicant’s decision to travel to Canada, i.e. arranging to get married and bring his new spouse back with him to the U.S., it is clear that the applicant intended to remain outside of the United States for an indefinite period, or at least as long as it took to accomplish this purpose. As such, the applicant has provided no clear evidence of an intention on his part to return to the U.S. within the 45-day limit.

On appeal, counsel asserts that the applicant’s absences should have been evaluated with regard to 8 C.F.R. § 245a.16, rather than 8 C.F.R. § 245a.15. According to 8 C.F.R. § 245a.16, an applicant must also establish continuous physical presence from November 6, 1986 through May 4, 1988. The regulations at 8 C.F.R. § 245a.16(b) state the following:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

Nevertheless, in the present case, the applicant has been determined to have been absent from the United States for a period of 6 months -- well in excess of the 45-day limit for such absences as set forth in 8 C.F.R. § 245a.15(c)(1). An absence of such length does not conform to the term “brief” as envisaged in 8 C.F.R. 245a.16(b). As such, that regulation does not have applicability to this case.

In his rebuttal to the notice of intent, the applicant claimed that, while his adjustment interview was being conducted, he was unable respond intelligently to the examining officer’s questions due to his purported lack of fluency with the English language. However, the record discloses that the applicant signed a sworn statement in English at the time of his interview, in which he attempted to account for his absence from the U.S. during the period in question. Moreover, an examination of the applicant’s statement indicates that there had been no need for the services of an interpreter. It should also be noted in this connection that the applicant passed the reading/writing English skills component of the Basic Skills examination administered at the time of his interview, thereby successfully demonstrating that he had acquired at least a minimal understanding of English.

Accordingly, in the absence of clear evidence that the applicant intended to return from his trip to Canada within 45 days, it cannot be concluded that an emergent reason “which came suddenly into being” delayed or prevented his return to the United States 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.