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U.S. Citizenship
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Date: **OCT 24 2005**

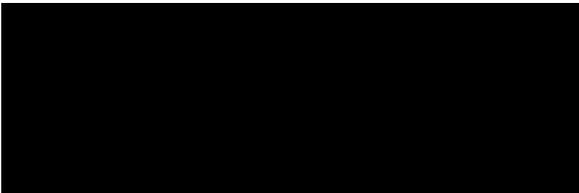
IN RE:

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. 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, New York, New York, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he 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 conclusion that the applicant admitted that he had been absent from this country from August 1987 to November 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The district director further concluded that the applicant was not continuously physically present in the United States as required by 8 C.F.R. § 245a.16(b) because of his admitted absence from this country from August 1987 to November 1987.

On appeal, counsel asserts the applicant's absence from the United States in 1987 was due to his father's illness.

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 § 1104(c)(2)(B) of the LIFE Act and 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 must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. See 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

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.

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about August 28, 1991. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant indicated that he had been absent from this country for an unspecified number of days when he traveled to Sudan for a visit from July 1987 to November 1987. The applicant included a separate class member declaration in which he indicated that he departed the United States on August 25, 1987 and then returned to this country on November 25, 1987. The applicant declared that the purpose of his trip was "sickness." The applicant also included a letter written in Arabic that is accompanied by a translation. These documents reflect that the applicant's father was under a doctor's care for acute severe asthma and cardio-pulmonary problems from July 27, 1987 to November 25, 1987.

The applicant also provided photocopies of the pages of his Sudanese passport. This document reflects that the applicant obtained a B-2 visitor's visa from the American Embassy in Khartoum, Sudan on August 30, 1987, and that he subsequently entered the United States at New York, New York on November 25, 1987.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on April 22, 2002. The record further shows that the applicant appeared for an interview relating to his LIFE Act application at the New York, New York District Office on March 18, 2004. The notes of the interviewing officer reflect that the applicant testified under oath that he had been absent from the United States from August of 1986 or 1987 to November 1987 when he traveled to Sudan. The applicant testified that he thought he took this trip because his father was ill.

Based upon the evidence in the record and the applicant's own testimony it must be concluded that his admitted absence from the United States in the period from August 25, 1987 to November 25, 1987 constituted 92 days, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absence of ninety-two days exceeded the forty-five day limit for a single absence.

On March 19, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his LIFE Act application. Specifically, the district director stated that the applicant had provided conflicting testimony relating to his places of residence and employment during the requisite period from January 1, 1982 to May 4, 1988 during his interview on March 18, 2004. However, as acknowledged by the district director, the applicant was providing testimony relating to events that occurred some twenty years ago, a significant and considerable period of time. It is reasonable that an individual either could not recall or misstated specific addresses and dates when referring to a residence or job that was sixteen to twenty-two years old. Therefore, the conflicting testimony relating to prior residences and employment provided by the applicant at his interview on March 18, 2004 cannot be considered as fatal to his claim of

residence in this country in the requisite period. Nevertheless, the district director correctly noted that the applicant's admitted absence from the United States in the period from August 25, 1987 to November 25, 1987 constituted ninety-two days, and, therefore, exceeded the forty-five day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

In response to the notice of intent to deny and on appeal, counsel acknowledges the applicant's absence from this country from August 25, 1987 to November 25, 1987, but asserts that his return to the United States had been delayed by an emergent reason. 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 United States 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."

Counsel contends that the applicant could not return to this country until his father had recovered from an illness. However, as noted above, the record contains a letter written in Arabic accompanied by a translation both of which the applicant included with his Form I-687 application. These documents reflect that the applicant's father was under a doctor's care for acute severe asthma and cardio-pulmonary problems from July 27, 1987 to November 25, 1987. The direct and independent evidence in the record establishes that applicant's father became ill on or about July 27, 1987, well before the applicant admitted departing the United States for Sudan on August 25, 1987. The applicant had knowledge of his father's serious medical condition prior to his departure from this country and should have been aware that an extended period of recovery from such an illness was foreseeable. Without any direct and independent evidence to the contrary, it cannot be concluded that applicant's absence from the United States of ninety-two days from August 25, 1987 to November 25, 1987 was due to an "emergent reason" within the meaning of *Matter of C*, *supra*. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I. & N. Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980).

Even if the applicant's absence of ninety-two days in 1987 was determined to be brief, casual, and innocent for the purpose of establishing continuous physical presence in this country, such determination would have no impact on the finding he did not continuously reside in the United States in the period from prior to January 1, 1982 to May 4, 1988 because his absence exceeds the forty-five day limit for a single absence. Therefore, the issue of the applicant's continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 need not be discussed.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has specifically admitted that he exceeded the forty-five day limit for a single absence from this country when he departed to Sudan on August 25, 1987, and did not return to the United States until November 25, 1987. The applicant has failed to submit sufficient evidence to establish that an emergent

reason delayed his return to the United States. The applicant has failed to establish having 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 is, therefore, 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.