

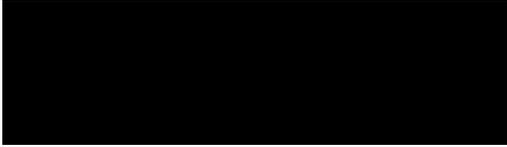


U.S. Citizenship  
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FILE:  Office: DALLAS Date: APR 20 2006

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. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Dallas, Texas, reopened, and subsequently denied again by said Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences, from the United States during the requisite period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel puts forth a brief disputing the director's findings along with documents in support of the appeal.

It is noted that the director, in his subsequent decision, did not address counsel's brief and documentation. As such, the brief and documentation will be considered on appeal.

"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 director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's Form I-687 and LIFE applications. The applicant indicated on both applications that she departed the United States to Iran in August 1984 and did not return until September 25, 1985.

On appeal, counsel provides the following:

- 1) A 1987 Country Reports on Human Rights Practices on Iran issued by the Department of State.
- 2) Several pages of the applicant's passport, which reflects the applicant was issued a visitor's visa on September 13, 1985, and entered the United States on September 25, 1985.
- 3) A letter dated May 25, 2003 from cardiologist, [REDACTED] in Ahwaz, Iran who indicated that the applicant's father was under his care and treatment from March 1984 to October 1987 for heart disease, blood clots and clogged arteries. [REDACTED] also indicated that the father died of a fatal heart in October 1987.
- 4) A 1989 memorandum of the legacy Immigration and Naturalization Service (legacy INS) entitled "Documentary Evidence for Legalization Applications (Form I-687)." The memorandum provided guidance on the evidentiary weight of affidavits in legalization applications under section 245A of the Immigration and Nationality Act.
- 5) A letter dated December 14, 1988, from the Rhode Island Immigration Reform Steering Committee addressed to the former legacy INS District Director, Boston, Massachusetts regarding the "Second Stage of the Legalization Program."
- 6) A response letter dated January 23, 1989 from the former district director to the committee.

- 7) A KLM Royal Dutch Airlines passenger ticket reflecting a departure on September 25, 1985 from Istanbul (Turkey) to Amsterdam (Netherlands), and a departure on December 19, 1985 from Houston (Texas) to Istanbul via Amsterdam.

Counsel contends the director failed to consider the evidence and the factual events leading to the applicant's prolonged absence from the United States. He refers specifically to, the change of government in Iran following the 1979 Islamic revolution, the war between Iran and Iraq, and the taking of hostages which led to the closure of the United States Embassy in Tehran, Iran. Counsel asserts that these events necessitated a change of national birth identification, an application for a new passport from the new Islamic regime, and an application for an exit visa, which under the new regime was only available after permission from a father or husband. Counsel explains that due to the applicant's passport change, she was required to apply for a new visa. Because there was no United States Embassy in Iran, the applicant had to travel to Turkey to apply for a new visa, which took approximately four months after she traveled by bus from Tehran to Turkey due to the cancellation of all flights between [REDACTED]. Counsel states that the applicant "had purchased a round trip ticket between Houston and Istanbul, Turkey for September to December proving her intention to return to her residence in Houston."

The ticket counsel refers to was purchased over a year after the applicant's departure from the United States. No "round trip ticket" has been submitted to corroborate the applicant's claim, on her Form I-687 application, that she was planning to return to the United States within a month.

It is noted that at the time the applicant filed her claim for class membership, she provided a copy of her Iranian passport. The passport reflects that it was issued on March 18, 1985, and the American Consulate General in Istanbul, Turkey received the applicant's visa application on August 19, 1985.

While not dealt with in the district director's decision, there must, nevertheless, be a 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."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. While the AAO takes into consideration the applicant's difficulty in obtaining the necessary official documentation, the fact remains that this delay in returning to the United States was not due to any "emergent reason" *i.e.*, one that was unforeseen at the time of her departure because the new regime was in power four and one half years prior to the applicant's departure from the United States. As such, new procedures in obtaining official documents were already initiated at the time of her departure, and it was a matter of public record that there was no United States Embassy in Iran. The applicant had to have known the new rules as she indicated on her Form I-687 application that one of the reasons for her trip to Iran was to obtain a new passport.

No emergent reason delayed the applicant's return to the United States. Thus, the applicant's year-long stay in Iran during 1984 and 1985 exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences and, therefore, interrupted her continuous residence in the United States. The applicant has failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. §§ 245a.11(b) and 15(c)(1).

Accordingly, 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.