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U.S. Department of Homeland Security
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**U.S. Citizenship
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Services**

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FILE:

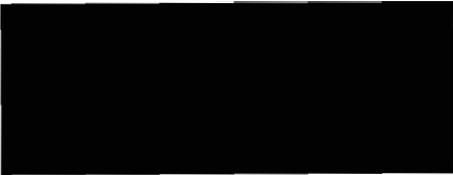
MSC 02 049 60525

Office: HOUSTON

Date: AUG 03 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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not established that she 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, and was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 1104(c)(2)(C) of the LIFE Act. 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 this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

The director noted in his decision that the applicant had failed to respond to the Notice of Intent to Deny (NOID). On appeal, the applicant submits an affidavit, which she stated was submitted on August 24, 2004 in response to the director's NOID, and in which she stated that complications with the birth of her baby in 1985 forced her to remain out of the United States until her daughter was two months old. The applicant further stated that her other absences during the qualifying period were no more than 18 to 20 days.

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. Section 1104(2)(c)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). "Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

Although the term "emergent" 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.

During her interview on April 19, 2004, the applicant stated that she first entered the United States without inspection in March 1981, and remained until 1985 when she returned to Mexico to give birth to her child. The applicant stated that she stayed in Mexico for two to three months, when she left the child with her mother and returned to the United States. The applicant further stated that she left the United States again in December 1987 to pick up her baby and remained in Mexico for approximately six months, returning in May or June 1988.

In her August 16, 2004 affidavit submitted with the appeal, the applicant stated that she left the United States in June 1985 to give birth to her child in Mexico, and that following complications with the birth, she remained in Mexico until the child was two months old. The applicant also stated that her family was trying to locate the doctor who provided medical care during the birth so that he could explain why she could not return

to the United States immediately following the birth. However, as of the date of this appeal, the applicant has submitted no additional documentation from the doctor to explain the delay in her return to the United States.

We note that on her Form I-687, Application for Status as a Temporary Resident, the applicant stated that she was out of the United States for less than 30 days in 1985, from June 28, 1985 to July 20, 1985. The applicant stated that her daughter was born on July 10, 1985, which means that she would have left the child when she was 10 days old rather than two months old. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant's husband submitted a December 3, 1996 sworn statement in which he stated that he personally took the applicant to Mexico in 1985. However, he did not state the date that the applicant returned to the United States. Further, the statement of the applicant's husband does not constitute competent objective evidence to establish the dates of her departure and return to the United States. *Id.*

Additionally, the applicant stated that her absence in December 1987 was for a period of only 18 days, and that she returned on January 3, 1988 rather than in May or June 1988 as she stated during her interview. The applicant offered no evidence to explain this inconsistency. *Id.*

The applicant has failed to establish that her two-month stay in Mexico following the birth of her daughter in 1985 was due to emergent reasons and has failed to submit evidence to explain her statement that she was absent from the United States for approximately six months in 1987 and 1988. Accordingly, her absences from the United States during these periods interrupted her "continuous residence" in the United States. The applicant has, therefore, failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988 and was continuously physically present in the United States from November 6, 1986 through May 4, 1988. Given this, she 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.