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U.S. Department of Homeland Security
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Washington, D.C. 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: HOUSTON

Date: MAY 04 2008

MSC 02 133 60435

IN RE:

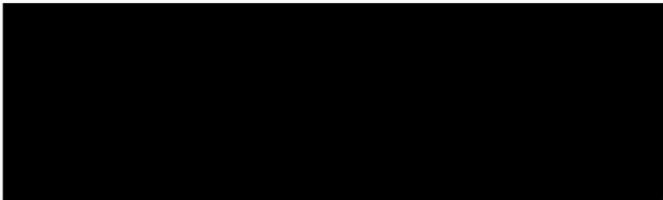
Applicant:



APPLICATION:

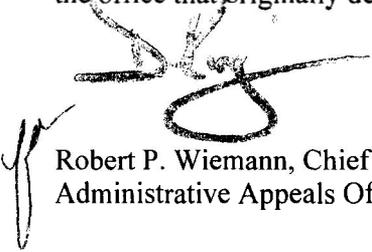
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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 sustained.

The director concluded that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States. Accordingly, the director denied the application.

On appeal, counsel asserts that the director erroneously denied the applicant on credibility and eligibility grounds, which were not previously addressed in his notice of intent. Counsel asserts that the applicant submitted a timely response to the Notice of Intent to Deny.

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.

At the time of her interview on December 23, 2002, the applicant listed her absences from the United States as follows:

- July 1982 to November 1982 for the birth of her daughter.
- August 1984 to August 1984 for vacation and business.
- July 1986 to August 1986 for vacation and business.

Although the record does not contain the daughter’s birth certificate, a copy of an immunization record from Ashford Spring Branch Pediatric Associates in Houston, Texas lists the daughter’s date of birth as August 6, 1982.

The director, in his Notice of Intent to Deny dated August 5, 2003, informed the applicant that her 1982 absence from the United States exceeded the 45-day limit for a single absence, and no evidence was provided to establish that her *prolong* absence from the United States was due to an emergent reason. Counsel, in response, asserted that the applicant suffered severe complications during delivery and post-delivery of her **child that prohibited her to travel. As evidence, counsel submitted a letter dated August 21, 2003 from Dr. [REDACTED]** of Mexico City, Mexico, who indicated in pertinent part:

It is my pleasure to write this letter as an evidence of the dates [the applicant] had to spend back in 1982. Because of a complicated pregnancy and delivery of her second child and after a cesarean surgery, complications occurred due to a severe bleeding and infection together with lactase issues. After 90 days of post partum and lactase issues [the applicant] was able to go back to her home in the United States....

Based on [REDACTED] letter, the applicant’s prolonged absence from during 1982 was in fact due to an emergent reason that came suddenly into being and delayed the applicant’s return to the United States.

As neither the applicant's statement nor the record contains the *actual dates* the applicant departed the United States during each absence, it cannot be concluded that the applicant had exceeded the 180 day aggregate total for all absences during the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.