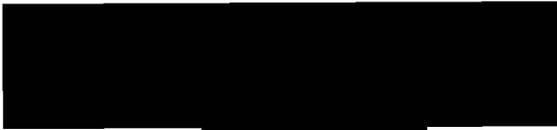




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FILE: [REDACTED]  
MSC 02 179 60037

Office: LOS ANGELES

Date: **MAY 19 2006**

IN RE: Applicant: [REDACTED]

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:

SELF-REPRESENTED

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, 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, Los Angeles, California and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director decided 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. 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 the regulations at 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant submits additional documentation, and states that guerilla activity and her mother's illness forced her to remain in El Salvador beyond her planned stay.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and her continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

"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.]

On her Form I-687, Application for Status as a Temporary Resident, signed on August 11, 1987, the applicant stated that she departed the United States in November 1985 and returned in January 1986, and that the purpose of her trip was for an "emergency." In different subsequent statements, the applicant stated that she left the United States in November 1985 to attend her brother's funeral. In a June 6, 1991 statement, the applicant stated:

My intention was certainly to stay less than a month and return home. I, with several other relatives who had attended the funeral, were returning after Christmas at the end of December . . . when during the overland trip two relatives of mine were abducted. The abductors did not leave us receipts for my two relatives and since this action is common in that country the police were not helpful and getting them or obtaining from them a police report was futile . . . After staying a week over the 45 days to look, we finally rushed back home so our status would not be affected.

This statement lacks credibility, however, as the LIFE Act and its accompanying requirements for eligibility were not in existence at this time, and could not have been a factor in the applicant's decision as to the length of her stay outside of the United States. Further, no other immigration program in effect at the time of the applicant's trip to El Salvador could have impacted her decision as to the length of her absence from the United States.

In her May 2004 adjustment interview, the applicant stated that she remained in El Salvador for two months but did not indicate any reasons for her prolonged stay.

In response to the director's Notice of Intent to Deny the application to adjust status dated June 3, 2004, the applicant submitted a sworn statement in which she stated that the reason that she "overstayed in El Salvador was because the guerrillas had taken over the City of San Agustin and she had to hide until they decided to leave, she was afraid that they would harm her."

As evidence of this event, the applicant submitted a June 2004 joint sworn statement from [redacted] and [redacted], who stated that the applicant came to San Agustin in November 1985 for a period of two months, and that she "shortened" her stay because the town had been taken over by guerillas:

They make evident that to get in and out of San Agustin everybody had to pay war taxes, and even more, when any person was coming from the Unite[d] States of America and it was such the power of the guerrillas that if they did not want to let such person to leave the town he/she did not leave the town; for this reason [the applicant] shortened her staying [sic] in San Agustin.

On appeal, the applicant submits a July 2, 2004 statement from the Municipal Mayor of the Villa of San Agustin, who stated:

[The applicant] came from the United States to El Salvador to attend her brother's funeral which occurred in this villa on November 16, 1985, and she could not return[] immediately because this town had been taken by the Guerrilla forces and there was no transportation and one week later the Guerrilla forces kidnapped her brother and one of her [nephews] and this motive [sic] her mother got severely ill and she had to stay taking care of her mom until her health would get better. Meanwhile, the fact that she had come from the United

States her life was in danger in this town for the war (conflict) which there was during that time in this country and this made even longer her staying [sic] in El Salvador.

The applicant was apprehended by the border patrol on January 17, 1986, after crossing the border without inspection. The evidence indicates that the applicant's absence from the United States was in excess of 45 days. It is necessary, therefore, to determine whether the applicant's prolonged continuous absence was due to an "emergent reason." Although emergent reason is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that *emergent* means "coming unexpectedly into being."

The applicant indicated that her reason for the trip in November 1985 was to attend her brother's funeral. While this suggests that there was a valid basis for the applicant's departure from the United States, the applicant has submitted conflicting reasons for her continued absence of over 60 days. While initially claiming that the kidnapping of her relatives during the "overland portion" of her return trip and her subsequent attempts to find them, were the cause of her prolonged absence, the applicant subsequently claimed that the intimidation tactics and her fear of the guerillas were the cause of her prolonged stay. According to the statement of [REDACTED] and [REDACTED], however, the guerillas had taken over the applicant's home town in 1982, three years before the applicant returned home, and that she "shortened" her trip for this reason. Further, they do not indicate that the applicant had relatives that were kidnapped and that she remained in El Salvador to look for them or to hide from the guerillas herself.

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).

Because of the evolving reasons given by the applicant, she has not established that her prolonged absence from the United States was due to emergent reasons. Therefore, she has failed to establish that she 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, 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.