

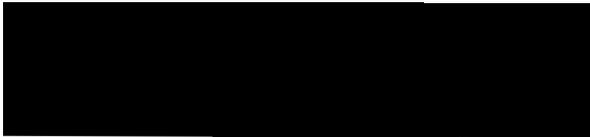
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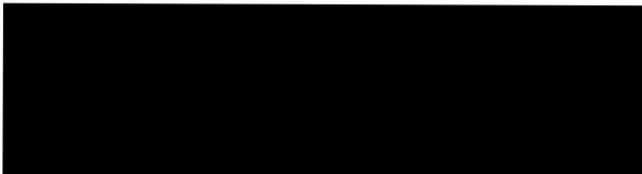
FILE: MSC 02 092 62700 Office: DALLAS Date: SEP 06 2006

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Acting District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded 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. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the requisite period.

On appeal, the applicant asserts that his absence from the United States during 1984 was brief, casual and justified.

"Continuous 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.]

The record contains a Form I-687 application signed by the applicant on June 22, 1990, which lists the applicant's absences during the requisite period as follows:

December 1983 to March 1984 to Mexico to visit family  
December 1985 to March 1986 to Mexico to visit his wife

The record also contains an additional Form I-687 application signed February 24, 1994, which lists the applicant's absences during the requisite period as follows:

December 1983 to February 1984 to Mexico to get married  
December 1987 to March 1988 to Mexico to visit his wife

In a sworn statement signed March 1, 1994, the applicant admitted under oath that he departed the United States in December 1983 in order to get married and did not return until February 1984. The applicant also admitted that he departed the United States in December 1987 and did not return until March 1988.

On October 3, 2003, the applicant admitted under oath in a signed a sworn statement that he departed the United States to Mexico in December 1983 in order to visit his family and to get married. The applicant indicated that he did not return to the United States until March 1984. The applicant also admitted that he departed the United States to Mexico in 1985 for three months, and in 1988 for one month.

The director, in her Notice of Intent to Deny dated December 29, 2003, informed the applicant that his December 1983 to March 1984 absence from the United States exceeded the 45-day limit for a single absence. Counsel, in response, provided a copy of the applicant's marriage certificate, which occurred on February 11, 1984. Counsel, in response to the Notice of Intent to Deny and on appeal acknowledged that the

applicant's absence exceeded 45 days, but asserted that the applicant's absence was motivated by, or caused by emergent reasons. Counsel asserted that the applicant remained in Mexico "because of the obligation he had with his wife to leave her established and not to abandon her."

The director, in denying the application, informed the applicant that marriage is not considered to be 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. However, in the instant case, that was not the situation. The applicant's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon his by unexpected events.

It is unclear why the director failed to advise the applicant of his other absences from the United States during the requisite period as said absences coupled with the December 1983 to March 1984 absence exceeded the aggregate limit of one hundred and eighty (180) days for total absences from the United States. Nevertheless, the applicant's December 1983 to March 1984 stay in Mexico exceeded the 45-day limit for a single absence and interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he 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). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The regulation at 8 C.F.R. § 245a.18(a)(1) states in part that an alien who has been convicted of a felony or three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony," pursuant to 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

Along with his LIFE application, the applicant submitted court dispositions from the Dallas County 292<sup>nd</sup> Judicial District Court in Texas, which revealed the following:

1. On December 19, 1986, the applicant was arrested by the Sheriff's Office in Dallas, Texas for driving while intoxicated. On June 12, 1987, the applicant pled guilty to this misdemeanor offense. The applicant was sentenced to serve 90 days in jail, ordered to pay a fine and placed on probation for two years. Cause no. [REDACTED]
2. On August 9, 2001, the applicant was charged with assault causing bodily injury with a prior conviction, a 3<sup>rd</sup> degree felony. On February 18, 2002, the charge was reduced to a lesser included

offense of assault, a Class A misdemeanor to which the applicant pled guilty. The applicant was sentenced to serve 11 months in jail and ordered to pay a fine. Imposition of sentence was suspended and the applicant was placed on probation for 11 months. Cause no. [REDACTED]

3. On August 17, 2001, the applicant was charged with injury to a child, 14 years or younger. On February 18, 2002, the charge was reduced to a lesser included offense of assault, a Class A misdemeanor to which the applicant pled guilty. The applicant was sentenced to serve 11 months in jail and ordered to pay a fine. Imposition of sentence was suspended and the applicant was placed on probation for 11 months. Cause no. [REDACTED]
4. On August 29, 2001, the applicant was charged with retaliation, a 3<sup>rd</sup> degree felony. On February 18, 2002, the charge was reduced to a lesser included offense of terroristic threats, a Class B misdemeanor to which the applicant pled guilty. The applicant was sentenced to serve 11 months in jail and ordered to pay a fine. Imposition of sentence was suspended and the applicant was placed on probation for 11 months. Cause no. [REDACTED]

The applicant is ineligible for the benefit being sought due to his four misdemeanor convictions. 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a)(1). Therefore, 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.