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U.S. Citizenship
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FILE: [REDACTED]
MSC 03 245 60293

Office: DALLAS

Date: NOV 16 2007

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. Any further inquiry must be made to that office.

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

Robert A. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that his legal entry of April 7, 1987 "did not meaningfully interrupt my unlawful status."

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).

The applicant has indicated on his Form I-687 application and in an affidavit that he entered the United States on April 7, 1987 with a CR-1 nonimmigrant visa.¹ The applicant also indicated that he had continuously resided in the United States from October 21, 1980 through May 4, 1988. The applicant asserted, in pertinent part:

On December, 1985 I got married to [REDACTED] (U.S. Citizen) and in January, 1986 she filed a petition for my Permanent Residence. I received a letter from the American Embassy in El Salvador on March, 1987 in which I was given an appointment for April, 1987 (I don't recall exact date). I left to El Salvador on March 30th, 1987 and on April 7, 1987 I was admitted under temporary evidence of lawful admission (I-551) in the United States. Sometime after I returned from that trip, we started to have problems in keeping our marriage balanced. We could not get along anymore and our relationship as husband and wife had grown weaker. Sometime before December, 1987 we separated from each other because we realized that our relationship could not go the way it was. On December 25, 1987 I went to El Salvador to visit my family for Christmas and I returned from this trip on January 10th, 1988. When I came back from this trip I was worried about my legal status in this country, because I knew that since I was not living with my wife anymore I automatically lost the legal status that I had, so I went to Immigration to ask if I could qualify for the so called program of "Amnesty", but I was told by and Immigration Officer that I did not qualify because I had gone out of the country.

The record reflects that along with his Form I-687 application, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability and listed visa fraud as his reason for filing the waiver.

The director determined that the applicant had submitted sufficient evidence to establish he resided in the United States from before January 1, 1982 through May 4, 1988 and the AAO concurs with the director's finding.

However, at issue in this proceeding is the applicant's legal status from April 7, 1987 through May 4, 1988.

¹ The applicant's conditional resident status was terminated on May 25, 1993.

The director, in denying the application, determined that since the applicant had entered the United States in a legal status during the requisite period, he did not meet the statutory requirements for permanent resident status under the LIFE Act.

Eligibility exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. § 245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), 8 C.F.R. § 245a.2(b)(10).

In the instant case, the filing of the Form I-690 is moot as the applicant was not returning to an unlawful residence status in January 1988. The applicant was in a legal status when he departed the United States in December 1987 and reentered in January 1988. The record clearly establishes through the applicant's testimony that he entered into the marriage with good faith and without the purpose of obtaining lawful status and residence through fraud or misrepresentation; his marriage dissolved due to irreconcilable differences. There is no evidence of fraud or misrepresentation in the record.

The evidence in the record clearly reflects that the applicant resided in continuous unlawful status from before January 1, 1982 through April 6, 1987 and in a *lawful status* since April 7, 1987 through May 25, 1993. Accordingly, the applicant has failed to establish that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this, he 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.