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U.S. Citizenship  
and Immigration  
Services

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FILE: MSC 02 246 66283

Office: MIAMI (ORLANDO)

Date: **APR 25 2008**

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

The director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the 45-day limit for a single absence, as well as the aggregate limit of 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 applicant timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office, in which she requests a review of her case and consideration of the evidence she sends. The applicant submits photographs, which she states depict her residence and presence in the United States. The applicant indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than 28 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. "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.

The director's determination that the applicant had been absent from the United States for over 45 days and that her total absences exceeded 180 days was based on the applicant's statements on her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on November 20, 1991. In that application, the applicant stated that she left for Mexico in December 1985 to get married and returned in March 1986. The applicant also stated that she had gone to Mexico on January 30, 1988, because her father-in-law was ill and returned on April 15, 1988.

During her LIFE Act adjustment interview on May 21, 2003, the applicant executed a statement in which stated that she made trips to Mexico for one month at a time. She stated that she had her baby in Mexico and brought her to the United States in March 1988. According to her Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant's daughter was born in Mexico on February 11, 1988.

In response to the director's Notice of Intent to Deny (NOID) issued on September 16, 2005, the applicant submitted a sworn statement in which she stated that the person who helped her fill out her application put in the wrong dates and because of her poor English skills, she was not able to review it before she sent

it. The applicant then stated that the correct dates that she was out of the United States were from January 30, 1988, to March 9, 1988, when she visited her sick father-in-law and gave birth to her daughter; and from December 28, 1985, to January 10, 1986, when she was married. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted documentation in an effort to establish that she resided continuously in the United States since prior to January 1, 1982, but submitted no documentation to corroborate her absences from the United States.

Additionally, on a form to determine class membership, which she signed under penalty of perjury on November 20, 1991, the applicant stated that she departed the United States on December 28, 1985 and returned on March 15, 1986, and again on January 30, 1988, and returned on April 15, 1988. The record also contains a NOID dated October 17, 1998, issued in conjunction with her Form I-687 application, which stated that during her January 21, 1992, interview, the applicant stated that she had traveled to Mexico on December 28, 1985, and returned on March 15, 1986, and again on January 30, 1988, and returned on April 15, 1988. The record does not contain the applicant's response to the NOID.

An absence of more than 45 days must be "due to emergent reasons." 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 reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant's return to the United States more than just inconvenient. The applicant does not now admit that her absences exceeded 45 days and therefore does not provide evidence that the absences were due to emergent reasons.

Accordingly, the applicant's trips to Mexico during 1985 and 1988 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, 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, 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.