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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: NEW YORK Date: DEC 16 2008

MSC 02 248 65537

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).

IN BEHALF OF APPLICANT:

[REDACTED]

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 Benefits 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director decided 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 a single absence from the United States during this period.

On appeal, the applicant asserts that his absence from October 21, 1984 to December 10, 1984 was due to an emergency visit to his native country, Bangladesh, because his mother was ill. The applicant requests that his application be reconsidered.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"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 director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony taken at the time of his interview and his sworn statement signed May 4, 2004. In his testimony the applicant indicated that he departed the United States for two months and in his statement, the applicant indicated that he departed the United States on October 21, 1984 and returned on December 10, 1984.

On August 25, 2007, the applicant was advised in writing of the director's intent to deny the application. In her notice of intent, the director indicated that, due to the applicant's absence from the United States from October 21, 1984 to December 10, 1984, he had failed to establish continuous residence in the United States. The director also advised the applicant that he had not established that the absence was due to emergent reasons.

The applicant, in response, reaffirmed his October 21, 1984 to December 10, 1984 absence from the United States. The applicant asserted that his departure was due to an emergency visit to see his ailing mother.

The director, in denying the application, noted that the applicant had not established that his absence of 51 days in 1984 from the United States was due to emergent reasons.

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.” 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 Bangladesh would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. The applicant’s extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of his control that prevented his from returning far sooner.

The applicant’s 51-day stay in Bangladesh during the requisite period interrupted his “continuous residence” in the United States. Therefore, the applicant has failed to establish that he resided in the United States in a continuous unlawful status 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). Accordingly, 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.