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U.S. Citizenship  
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Services

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[REDACTED]

FILE: MSC 02 106 64276

Office: HOUSTON

Date: DEC 16 2008

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:  
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

Handwritten signature of John F. Grissom in black ink.

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

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in denying the application, and that the evidence demonstrates the applicant's eligibility under the LIFE Act.

Section 1104(c)(2)(B)(i). 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 at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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.

On November 3, 2004, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had exceeded the forty-five (45) day limit for a single absence from the United States in the requisite period, and the one hundred and eighty (180) days aggregate of all absences as set forth in 8 C.F.R. § 245a.15(c)(1). The applicant was granted thirty days to respond to the notice. The director noted that the applicant's passport had been issued in Peshawar, Pakistan, on February 2, 1988; that on August 22, 1988, a B-2 Visitor's Visa was issued to the applicant; there were two exit stamps, dated 5-2-88 and 4-6-88, on the passport, and, a September 23, 1988 entry stamp into the United States. Based on the passport evidence, the director determined that the applicant was outside the United States beyond the period of time allowed by regulation. The applicant was granted thirty days to respond to the notice.

The record reflects that in response to the NOID, the applicant denied having been absent for over 30 days during the requisite period. The applicant stated that his family members in Pakistan obtained the passport for him while he was in the United States, and that he traveled to Pakistan to obtain the Visitor's Visa in August 1988, and then returned to the United States.

In his denial notice, dated December 22, 2004, the director determined that the applicant's response to the NOID was insufficient to overcome the reasons stated in the NOID, and therefore denied the application.

The issue in this proceeding is whether the applicant has exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period, and the one hundred and eighty (180) days aggregate of all absences, and therefore, is unable to demonstrate the requisite continuous residence in the United States.

In the absence of additional evidence from the applicant, it is determined that the absence from October 1987 to September 1988 exceeded the 45 day period allowable for a single absence and the one hundred and eighty (180) days aggregate of all absences. There is no indication that the applicant's prolonged absence from the U.S. was due to 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."

Contrary to counsel's assertion, the record pertaining to the applicant's absence is clear. The record reflects that the applicant's passport was issued, in Pakistan, on February 2, 1988; his B-2 Visitor's Visa was issued in Pakistan on August 22, 1988; his passport has two exit stamps indicating he departed Pakistan on 5-2-88 and 4-6-88; and, there is a September 23, 1988 entry stamp into the United States.

The record reflects that the applicant confirmed this prolonged absence at his Removal Proceedings before an Immigration Judge, on October 25, 2000, where he testified under oath that he twice departed the United States in 1987. First, in 1987 he departed for about a month and returned. Then, in 1987 he departed again and returned in 1988, with a visitor's visa. The applicant also testified, and as noted above, the record reflects only one entry for the applicant in 1988, which is confirmed by the September 23, 1988 entry stamp into the United States. This evidence points clearly to the applicant's prolonged absence from 1987 to September 23, 1988, an absence of over 180 days.

The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the evidence in his passport. In addition, the applicant has failed to submit evidence that his prolonged absence was for emergent reasons. In the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

A review of the record reveals that on October 11, 1999, the applicant was found guilty, and was convicted, by the County Criminal Court, Harris County, Texas, of THEFT. The court sentenced the applicant to 180 days jail, plus fines and costs.

The applicant has failed to establish that he 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, 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.