



U.S. Citizenship
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FILE: [REDACTED] Office: HOUSTON Date: DEC 22 2008
MSC 02 212 60807

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:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The district director determined that the applicant had not established that she resided in the United States in a continuous unlawful status before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's conclusion that the applicant admitted that she had been absent from this country for three months in 1987, and therefore, exceeded the forty five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel asserts the applicant was not absent for three months during the qualifying period, and that the interviewing officer misunderstood the applicant during an interview.

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. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

"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 on hundred and eighty days (180) 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.

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. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the assertion or asserted claim is probably true. *See Matter of E--M-*, 20 I&N Dec. 77 (Comm. 1989).

Matter of C-, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

On April 29, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) requesting additional information pertaining to the applicant's criminal record and a signed statement by the applicant from 1991 that indicated he had been absent from the United States for more than 45 days at one time.

On August 17, 2004, the director denied the application because the applicant had broken her chain of continuous unlawful residence and had failed to establish her continuous unlawful presence during the required period.

The applicant admitted that she had been absent from this country for a period over 100 days from at least November 15, 1986, to February 27, 1987, and therefore exceeded the forty-five day limit for a single absence from the United States during this period. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because her absences of approximately 100 days exceeds the forty five day limit for a single absence.

In response to the notice of intent to deny and on appeal, counsel urges CIS to disregard the testimony the applicant made, in the presence of her attorney, during an interview. During that April 7, 2004, interview she stated that traveled in and out of the United States on a B-2 visa between 1970 and 1990. She stated that she would sometimes return for up to a period of a year. Even the Social Security Statement submitted by the applicant indicates no income for the years 1983, 1984, 1986 through 1988. The applicant had a child born in Mexico in 1986, and has not submitted any evidence which corroborates the instances when the applicant states she left the United States and when she returns, thus even her claimed departures and returns are not corroborated by the record. In light of these admissions, and evidence in the record which indicates the applicant was not continuously unlawfully present during the required period, the applicant has failed to reconcile her inconsistent testimony.

Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because her repeated absences exceed the forty five day limit for a single absence.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This constitutes a final notice of ineligibility.