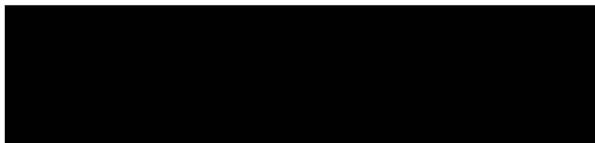


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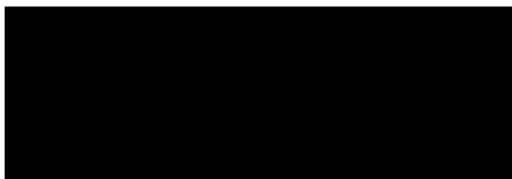


FILE: [REDACTED] Office: CHICAGO Date: JUL 29 2008
MSC 01 348 60280

IN RE: Applicant: [REDACTED]

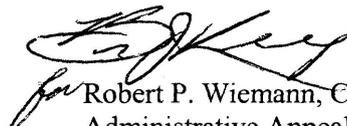
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.


for 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined 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, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he has resided continuously in the United States from May 1982 through May 4, 1988. He stated that due to family problems he had departed the United States to Pakistan in April 1983, and returned to the United States in May 1983. The applicant does not submit additional evidence on appeal.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“CSS”), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“LULAC”), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (“Zambrano”). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of “[a]ny other relevant document(s).” See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

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 June 28, 2006, 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's determination of the applicant's absence was based on the applicant's statement under oath at his interview, in the presence of an officer of Citizenship and Immigration Services (CIS), that he had entered the United States illegally in July 1981, then six months later, in January 1982, he departed to Pakistan, and he returned to the United States in 1983. The director also noted that the applicant's passport reveals that on May 18, 1983, the applicant had entered the United States, using an F-1 visa. The director further stated that based on the applicant's statement, and the passport evidence, the applicant would have been 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's attorney submitted a statement asserting that the applicant had entered the United States before January 1, 1982, and had resided continuously in unlawful status through May 4, 1988. Counsel noted that the applicant submitted an affidavit from [REDACTED] the applicant's brother, dated August 8th 2006, stating that the applicant had visited Pakistan in April 1983 and returned to the United States in the first week of May 1983. No additional evidence was submitted.

In his denial notice, dated October 4, 2007, 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 director noted that the affidavit from [REDACTED] lacked sufficient detail and verifiable evidence.

The record reflects the following: 1) the applicant's passport was stamped by the Embassy of Pakistan in Doha, Qatar, on February 2, 1983; 2) the applicant was issued an F-1 nonimmigrant visa by the United States Embassy in Doha on February 12, 1983; 3) the passport also reveals a stamp from the British Embassy, Doha, dated February 27, 1983, an unclear stamp dated February 28, 1983 (in Arabic), an unclear stamp issued in Karachi, Pakistan, on March 1, 1983, an exit stamp issued in Karachi, Pakistan, on April 13, 1983, and a transit stamp, dated May 14, 1983, issued at Heathrow Airport, London; and, 4) the applicant was admitted as an F-1 nonimmigrant at Chicago, Illinois, on May 18, 1983, to attend Roosevelt University in Chicago, Illinois. Accordingly, the applicant cannot 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 section 1104(c)(2)(B) of the LIFE Act.

In the absence of additional evidence from the applicant, it is determined that the absence in 1983 exceeded the 45 day period allowable for a single absence. 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, although the applicant has submitted an affidavit, and employment and earnings statements, in an attempt to establish his continuous residence, the stamps in his passport confirm that the applicant had been absent from the United States from February 2, 1983

until May 18, 1983. Therefore, the applicant had a single absence from the United States that exceeded 45 days during the requisite period. 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.

Furthermore, the applicant has submitted a questionable affidavit in an attempt to establish the requisite continuous residence and continuous physical presence in the United States. Specifically, the applicant submitted an affidavit from [REDACTED] his brother, dated August 8th 2006, stating that the applicant had visited Pakistan in April 1983 and returned to the United States in the first week of May 1983. Although the affiant states that he had arranged for the visa for the applicant, he failed to state (possibly inadvertently) that the applicant had obtained the visa in Doha on February 12, 1983, as evidenced by the stamps in the applicant’s passport; instead, the affiant states only that the applicant visited him in Pakistan in mid-April 1983, and erroneously states that the applicant returned to the United States during the first week of May 1983. In addition, as noted above, the record reflects that the applicant obtained an F-1 nonimmigrant visa at the United States Embassy in Doha on February 12, 1983. It is noted that in order to receive such a visa, the applicant had to convince a U.S. consular official that he resided in Pakistan, contrary to his claim that he resided in the United States at that time. These unresolved discrepancies cast further doubt on whether the applicant’s claim that he entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Contrary to counsel’s assertion, applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

The applicant has, therefore, 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.