

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE: [REDACTED]
MSC 02 019 61035

Office: NEW YORK

Date: JUN 30 2008

IN RE: Applicant:

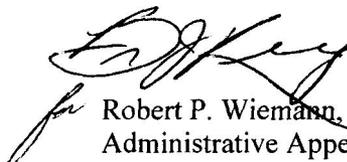


APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554. 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, New York, New York, 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. The director determined that the applicant had 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, the applicant asserts that the applicant has resided continuously in the United States from prior to January 1, 1982 through May 4, 1988, and that the documentation he submitted is genuine. With his appeal, the applicant submits an invoice for merchandise from [REDACTED], located at 870 Broadway, New York, New York, dated December 20, 1987.

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.

The director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States was based on the applicant's signed statement at his interview on August 7, 2006, in the presence of an officer of Citizenship and Immigration Services (CIS). In his statement, the applicant indicated that on May 19, 1987 he departed the United States for Bangladesh to visit his family, and returned to the United States on August 19, 1987. It is noted the applicant stated on the I-485 application that he last arrived in the United States on August 10, 1987. Based on the applicant's signed statement he was outside the United States beyond the period of time allowed by regulation.

On September 20, 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, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The applicant was granted thirty days to respond to the notice. In the NOID, the director noted that during the August 7, 2006 interview the applicant testified that he departed the United States on May 19, 1987 for Bangladesh to visit his family, and returned to the United States in August 1987. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant responded to the NOID and submitted additional evidence consisting of a mail envelope, date stamped December 12, 1986 and addressed to the applicant in New York. The director noted that the applicant's response to the NOID was insufficient to overcome the reasons stated in the NOID, and therefore denied the application on October 28, 2006, because the applicant had 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).

In the absence of additional evidence from the applicant, it is determined that the absence in 1987 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."

The record reflects that 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 independent, corroborative, contemporaneous evidence to rebut the content and substance of the signed statement he provided to the Service on August 7, 2006. 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 questionable letter(s) and affidavits in an attempt to establish the requisite continuous residence and continuous physical presence in the United States. The record reflects that the applicant stated at his interview on August 7, 2006, that a friend gave him an employment letter and all of the affidavits, evidently to facilitate his application and bolster

his claim that he had resided continuously in the United States since prior to January 1, 1982. By the applicant's own admission, he has submitted fraudulent documentation in support of his claim. The merchandise invoice from [REDACTED] is dated December 20, 1987, and does not relate to the period prior to the invoice date. The applicant has failed to provide any reliable documentation of his claimed entry in the United States prior to January 1, 1982 and his continuous residence during the requisite period. This casts doubt on whether the applicant's claim that he first 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). The 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.