

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



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

[Redacted]

LC

FILE: [Redacted]
MSC 02 232 62847

Office: NEW YORK Date:

MAY 02 2008

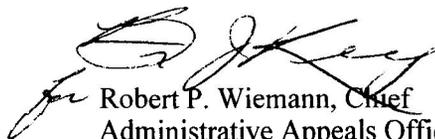
IN RE: Applicant: [Redacted]

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. 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.


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 decided that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988. The director also denied the application, finding that the applicant's absence in 1987 was not considered brief, and she had failed to establish continuous physical presence from November 6, 1986 through May 4, 1988.

On appeal, counsel asserts that the applicant provided an explanation in response to the Notice of Intent to Deny, and the director should have taken this explanation into account in making her decision.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish her continuous unlawful residence in the United States from before January 1, 1982, through May 4, 1988, and her continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Sections 1104(c)(2)(B)(1) and (C)(1) of the LIFE Act; 8 C.F.R. §§ 245a.11(b) and (c).

"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.]

At the time of her LIFE interview, the applicant stated under oath that she departed the United States in December 1983 to give birth to her daughter and returned in January 1984, and in August 1986 to give birth to her son and returned in September 1986. The applicant also stated that she departed the United States in April 1987 for a period of six to eight months to visit family and friends in India and Uganda.

On July 2, 2004, 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 in April 1987, she had disrupted her physical presence and said absence was not brief, casual or innocent.

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

It is not necessary for the applicant to provide an *emergent reason* for physical presence as the regulation at 8 C.F.R. § 245a.16(b) does not require it. *If* the applicant's absence has exceeded 45 days, her absence will be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), and evidence would be required to make a determination whether her prolonged absence from the United States was due to an emergent reason.

In response, the applicant acknowledged her absences of December 1983, August 1986 and April 1987. The applicant claimed that in April 1987 she traveled to India and Uganda to visit her family for 25 days. The applicant asserted, in pertinent part:

At the time of the interview on July 1, 2004, I was confused about the questions the interviewing officer immigration officer was asking and I misspoke about my length of absence from the United States in 1987 by saying I traveled for 6 (six) months. The confusion arose because at the interview when the immigration officer was asking me questions, the issued of my daughter's death came up and that made me depressed and disoriented so much so that I was not paying attention to the questions being asked and the responses I was giving.

The Notice of Intent to Deny is based solely on the alleged inconsistency at the interview, which is a result of a misunderstanding arising from the painful experience that I had undergone as a result of my daughter's death.

The statement of the applicant has been considered. However, no death certificate has been submitted to support her statement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Likewise, the assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant, also in response, submitted affidavits from three affiants who attested to the applicant's residence in the United States since June 1981, and attested to the applicant's current residence. However, these affidavits lack probative value as the affiants failed to provide an address for the applicant during the requisite period, and no detail regarding the nature or origin of their relationships with the applicant, the basis for their continuing awareness of the applicant's residence, or the dates of the applicant's absences from the United States were provided.

An absence of more than 45 days must be "due to emergent reasons" significant enough that the applicant's return "could not be accomplished." In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they 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. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period. The applicant does not provide any independent, corroborative, contemporaneous evidence to support her statement made in response to the Notice of Intent to Deny. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events. Accordingly, the applicant's 1987 absence from the United States exceeded the 45-day period allowable for a single absence, and interrupted her "continuous residence" in the United States.

Item 35 of the Form I-687 application requests the applicant to list all absences from the United States since her entry. The applicant listed only one departure from the United States; July 1987 to August 1987. Likewise, in a sworn declaration signed by the applicant on April 2, 1990, the applicant was requested to list each trip abroad, and once again the applicant only listed an absence from July 1987 to August 1987. The applicant's failure to disclose her December 1983, August 1986 and April 1987 departures from the United States, is a strong indication that the applicant was either not in the United States prior to August 1987 or may have been outside the United States beyond the period of time allowed by regulation.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988). Accordingly, the applicant's unsupported statement does not constitute competent objective evidence.

The applicant has, therefore, failed to establish that she 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 and the regulation, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Therefore, 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.