



U.S. Citizenship
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Services

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Office: HOUSTON

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Applicant:



APPLICATION:

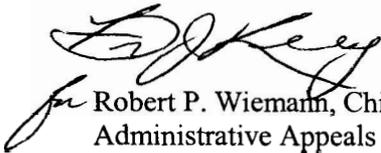
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



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.


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, Houston, Texas, 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, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence as well as the aggregate limit of 180 days for total absences, from the United States during the requisite period.

On appeal, counsel for the applicant acknowledges that a request in which to respond to the Notice of Intent to Deny was received prior to the issuance of the director's denial, but that he had requested additional time to investigate the case and file a meaningful response. Counsel acknowledges the applicant's absence from the United States from August 1982 to November 1985, and stated that the absence was due to circumstances beyond her control.

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)(i) and (C)(i) 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.]

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.

On May 8, 2003, the director issued a Form I-72, requesting the applicant to explain how she obtained a visa to enter into the United States. In a sworn affidavit dated June 30, 2003, the applicant indicated that she first entered the United States on December 17, 1981, but returned to her native country, Nigeria, on June 13, 1985, because her father was ill. The applicant indicated that her husband was granted a B-1/B-2 nonimmigrant visa and she accompanied him and re-entered the United States on October 8, 1985.

The record contains a copy of her passport which was issued to the applicant in Benin, Nigeria on February 20, 1985. The passport reflects that on August 14, 1985, the applicant was issued a B-1/B-2 nonimmigrant visa and she lawfully entered the United States on October 9, 1985. The record also contains a Form I-94, Departure Record, which reflects that the applicant entered the United States as a B-2 nonimmigrant visitor on October 9, 1985, and was granted a six-month period of authorized stay.

At the time of her LIFE interview on September 30, 2005, the applicant indicated that she first entered the United States in December 1981, but returned to her native country, Nigeria, in August 1982 because her father was ill. The applicant indicated that she remained in Nigeria until November 1985.

On December 8, 2005, the applicant was advised in writing of the director's intent to deny the application. In her notice, the director indicated that due to the applicant's absence from the United States from August 1982 to 1985, she had failed to establish continuous residence in the United States.

On January 12, 2006, Citizenship and Immigration Services received a request from counsel for an extension of 30 days in which to file a meaningful response.

The director, in denying the application on January 27, 2006, determined that the applicant had failed to respond to the notice.

On appeal, counsel asserts, in pertinent part:

The Service's Notice of Intent to Deny, although not explicit, appears to suggest that [the applicant] did not reside continuously in the United States for the "requisite periods". It is not clear whether or not the "requisite period" refers to the period before January 1, 1982 until May 4, 1988 or the period beginning November 6, 1986 until May 4, 1998. 8 CFR Section 245a.12 as quoted by the Service does not clarify either what period the Service is referring to: unlawful presence or continuous physical presence.

* * *

[The applicant] left the United States to care for her sick father in August 1982 and returned with a B1/B2 visa in November 1985. For her, the time expended in Nigeria was brief due to her peculiar circumstances. Since the Act and the regulations do not prescribe a period that defines brief absences it must [sic] be based on a reasonable person standard. [The applicant] did what a reasonable person would have done in her peculiar circumstances of caring for a sick loved one. Accordingly, her departure was brief.

As the applicant's absence from the United States occurred *prior to* November 6, 1986, the issue whether the absence was brief, casual and innocent has no relevance in these proceedings. However, as previously noted above, the regulation implementing the statutory requirement of "continuous unlawful residence" in the United States (from before January 1, 1982, through May 4, 1988) defines that term as no single absence from the United States exceeding 45 days and an aggregate of all such absences during the six-year time period not exceeding 180 days.

While not dealt with in the district director's decision, there must, nevertheless, be a determination as to whether the applicant's prolonged absence from the United States 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."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it 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. Except for her own statement, the applicant does not provide any independent, corroborative, contemporaneous evidence to support the events that occurred while in Nigeria. 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's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events. However commendable the applicant's decision may have been to stay with her father, the applicant's extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not "due to emergent reasons" outside of her control that prevented her from returning far sooner.

Moreover, section 101(a)(33) of the Immigration and Nationality Act defines the term "residence" as "the place of general abode; the place of general abode of a person means her principal, actual dwelling place, in fact, without regard to intent." In the instant case, the applicant has provided no evidence that she maintained any "principal, actual dwelling place" in the United States during her three-year absence. Whether or not the applicant's departure from the United States to Nigeria was voluntary, her actual dwelling place for three years was out of the United States, intent notwithstanding.

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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In an attempt to establish entry into the United States prior to January 1, 1982, the applicant submitted a lease agreement entered into on November 7, 1981, in the names of the applicant and [REDACTED], envelopes postmarked in March and October 1981, and a letter from Celestial Church of Christ which indicated the applicant has been a member since November 1981. The record contains a copy of the applicant's marriage license which occurred in January 1985 in Nigeria.

The lease agreement, envelopes and letter raise questions to their authenticity as the applicant indicated that she did not enter the United States until December 17, 1981. Furthermore, at the time of her interview, she informed the interviewing officer that she met her husband [REDACTED] in 1982 in Nigeria.

In addition, item 35 of the Form I-687 application requests that the applicant list all of her absences from the United States since her entry. The applicant, on said application dated March 21, 1991, listed the only departure from the United States as July 1985 to October 1985.

In a separate proceeding, the applicant filed Form I-485 application on June 29, 2007. Along with the Form I-485, the applicant submitted a Form G-325A, Biographic Information, signed on June 26, 2007, on which the applicant indicated that she resided in her native country, Nigeria, from November 1980 to November 1985. In a letter dated August 21, 2007, the applicant stated, in pertinent part, "I approach your honor to provide me a duplicate of the I-94 when I first came to America, which occurred on October 9, 1985 when I landed at Houston, TX."

The fact that the applicant failed to disclose her 1982 departure on the Form I-687 application, and revealed in a separate proceeding to have first entered the United States in October 1985 indicates she utilized documents in a fraudulent manner in an attempt to support her claim of residence in the United States prior to January 1, 1982 through October 8, 1985. By engaging in such an action, the applicant has irreparably harmed her own credibility.

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