U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI Date: SEP 07 2006

MSC 02 008 62989

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 Director, Missouri Service Center. The matter was remanded by the Administrative Appeals Office (AAO), and denied again by the District Director, Miami, Florida. The matter is before the AAO on appeal. The appeal will be dismissed.

The district director concluded 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. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the requisite period.

On appeal, counsel asserts, "[the applicant] has not left the United States for more than 45 days...." Counsel states that the applicant meets all the requirements and is eligible for the benefit being sought.

"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.]

On August 23, 2004, the applicant was advised in writing of the director's intent to deny the application. In his Notice of Intent to Deny, the director indicated that, due to the applicant's absences from the United States during the requisite period, he had failed to establish continuous residence in the United States.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own statement dated October 2, 2001 that was submitted by his former counsel. In his statement, the applicant asserted, "I was outside the United States since my arrival before January 1, 1982 from January 25, 1983 to December 1984 and June 19, 1987 to September 2, 1987."

The record contains a Form I-94, which indicates that the applicant entered the United States as a B-2 non-immigrant visitor on December 19, 1984.

It is noted that on or about July 5, 1990, the applicant attempted to file a Form I-485, Application for Permanent Residence. On the applicant's Form G-325A Biographic Information dated July 5, 1990, the applicant indicated that he resided in his native Venezuela from May 1962 to December 1987. Assuming, arguendo, this information is incorrect, the applicant's credibility, however, has been severely impaired as he failed to disclose *all* of his departures from the United States. The record contains a copy of the applicant's Venezuela passport which reflects: 1) an exit stamp dated October 17, 1982 from Venezuela; 2) a B-2 multiple entry non-immigrant visa issued on December 9, 1982. The applicant lawfully entered the United States as a B-2 non-immigrant visitor on December 17, 1982; and 3) a entry stamp dated June 9, 1987 from the Canadian customs. It also noted that the applicant's passport reflects a F-1 multiple entry non-immigrant visa issued on February 7, 1988.

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. 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 absences would appear to have been a matter of personal choice, not a situation that was forced upon his by unexpected events.

Accordingly, the applicant's January 25, 1983 to December 19, 1984 and June 19, 1987 to September 2, 1987 absences exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences, and interrupted his "continuous residence" in the United States.

The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1). The applicant has also failed to establish he meets the more stringent continuous physical presence requirement during the period of November 6, 1986 through May 4, 1988, as required by the statute, section 1104(c)(2)(C)(i) of the LIFE Act, and by the regulation, 8 C.F.R. § 245a.11(c).

Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record contains a FBI report, which reveals on November 18, 1990, the applicant was arrested under the alias [redacted] by the Metro Dade Police Department in Florida for resisting an officer. The final outcome, however, is unknown.

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