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

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FILE: [redacted] Office: NEW YORK Date: OCT 02 2007

MSC 02 179 61415

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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act, on April 3, 2003. The decision was reopened on service motion on March 31, 2004 and again denied on June 8, 2005. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion 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).

"Continuous unlawful 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 director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony in a sworn, signed statement dated January 24, 2004, in which she stated that she departed the United States in April 1988 and returned in May 1988, an absence of approximately sixty-three days. On her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on November 15, 1988, and on her form to determine class membership, which she signed under penalty of perjury on November 18, 1988, the applicant stated that she did not return to the United States until July 1988. In her Notice of Intent to Deny dated June 7, 2004, the director stated that the applicant admitted under oath that she was out of the United States for "close to a year." However, the record does not contain any interview notes or signed statement by the applicant that supports this statement by the director. Nonetheless, by her own admission the applicant was absent from the United States for a period in excess of forty-five days.

While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether 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."

In other words, the reason must be unexpected at the time of departure from the United States. However, in the instant case, the applicant has not established that her absence from the United States was extended unexpectedly. The applicant stated on her Form I-687 application that she left the United States to visit relatives and was not able to return during the forty-five day time frame because a family friend, who she considered as an aunt, was diagnosed with cancer. The applicant stated that she remained in Trinidad to be with her family. The applicant stated that the friend subsequently died but did not state when the death occurred or that she remained in Trinidad because of her friend's death.

The applicant did not explain why the diagnosis of a friend with cancer necessitated her presence and therefore constituted an emergent reason for her prolonged absence. The applicant did not state that the friend was physically incapacitated and needed her care or, as stated above, that the friend unexpectedly died during that period and she remained for the funeral. The applicant's stay beyond the 45-day limit set by the statute appears to have been a matter of personal preference and thus was not the result of an emergent reason.

On appeal, the applicant stated that "after further contemplation and much recollection," she did not remain outside of the United States for more than forty-five days. The applicant, however, submitted no documentary evidence to support her revised statement. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, the applicant's two to three month stay in Trinidad during 1988 interrupted her "continuous residence" in the United States. The applicant has, therefore, failed to establish that she 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 the regulations, 8 C.F.R. § 245a.11(b) and 15(c)(1). Given this, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

The record contains a November 23, 1988 sworn statement from [redacted] who stated that she consented to the applicant's use of her "document" to travel to Trinidad in April 1988 and that the applicant returned in July 1988. The record also contains a Form I-690, Application for waiver of Grounds of Excludability, dated November 27, 1988, on which the district office has issued no decision.

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