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

U.S. Citizenship and Immigration Services

L2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 09 2008

MSC 02 249 62542

IN RE: Applicant: [redacted]

PETITION: 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. 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.

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, Los Angeles, California, 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. This decision was based on the district 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)(i).

On appeal, the applicant indicates that he will be submitting additional evidence in support of his appeal.

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 own testimony in a sworn, signed statement taken at the time of his interview at the Los Angeles district office on January 27, 2006, under oath and in the presence of an officer of Citizenship and Immigration Services (CIS). In his sworn statement, the applicant indicated that he

departed the United States in 1987, and that he did not return to this country until after three or four months to visit his mother in Mexico. The applicant stated that he stayed that long because he had not seen his mother for a long time and wanted to make sure that his mother was well. By the applicant's own testimony there is a strong indication that the applicant was outside the United States beyond the period of time allowed by regulation.

On January 27, 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 an interview, also on January 27, 2006, the applicant testified under oath that he left the United States in 1987 for three or four months. The record shows that the applicant failed to submit a response and, therefore the director denied the application.

On appeal, the applicant states that he misspoke because he was nervous during the interview. He states that he intended to say that in 1987 he departed from the United States for three or four weeks, rather that three or four months. However, as of the date of this decision, the applicant has failed to submit any independent, corroborative, contemporaneous evidence to rebut the content and substance of the sworn statement he provided to the Service on January 27, 2006.

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. In the NOID, the district director indicated that the applicant did not indicate whether his 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."

It is noted that although the applicant stated during his January 27, 2006 interview that he stayed three or four months in Mexico because he had not seen his mother for a long time and wanted to make sure that his mother was well, the applicant now claims that he misspoke during the interview. As noted above, the applicant has failed to submit any independent, corroborative, contemporaneous evidence to rebut the content and substance of the sworn statement he provided to the Service on January 27, 2006. The applicant has failed to provide a valid reason that necessitated a single absence from the United States beyond 45 days. 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.

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.