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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

L2

[redacted]

FILE: [redacted] Office: HOUSTON Date: JUL 01 2008

MSC 03 245 61933

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. The file has been returned to the National Benefits Center. 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, Houston, Texas, 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). The director noted that the record reflected that on July 4, 1987, the applicant was apprehended on entry at Catarina, Texas, at which time he stated that he had departed El Salvador on April 26, 1987, and had traveled through Guatemala, and Mexico, until his arrival in the United States on June 30, 1987.

On appeal, counsel for the applicant asserts that the applicant has resided continuously in the United States from prior to January 1, 1982 through May 4, 1988, and that the applicant's departure from the United States was brief, casual, and innocent. Counsel also states that the applicant was not deported from the United States pursuant to a court order. Counsel does not submit additional evidence on 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 statement taken at the time of his apprehension when he attempted entry into the United States and was subsequently interviewed on July 4, 1987, in the presence of an officer of Citizenship and Immigration Services (CIS). In his statement, the applicant indicated that he had departed El Salvador on April 26, 1987 and traveled to the United States to seek employment and to reside permanently in the United States. The applicant stated further that after departing El Salvador on April 26, 1987, and traveling through Guatemala, and Mexico, he arrived in the United States on June 30, 1987. The record reflects that, contrary to counsel's assertion, the applicant was placed in proceedings and ordered deported, on July 16, 1987, by an Immigration Judge. The applicant was deported to El Salvador at Houston, Texas, on August 10, 1987. Based on the record, by the applicant's own testimony, he was outside the United States beyond the period of time allowed by regulation.

On November 17, 2004, 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, on August 24, 2004, the applicant testified under oath that he first entered the United States in January 1981 without inspection; he first departed the United States to El Salvador in 1984 to attend his father's funeral, and returned illegally in 16 days; he left the United States for El Salvador, in August 1987, to accompany his girlfriend who was going there to give birth; when he attempted reentry into the United States in September 1987, he was detained and granted voluntary departure; and, he then returned to El Salvador, and after two or three days he re-entered the United States illegally and that he had not departed the United States since that time. The director noted that the applicant's testimony during the August 24, 2004 interview contradicted the evidence of record pertaining to the applicant's statement when he was apprehended on July 4, 1987, and subsequently deported on August 10, 1987. The director granted the applicant thirty (30) days to submit additional evidence. The record reflects that the applicant responded to the NOID. The director noted that the applicant's response was insufficient to overcome the reasons stated in the NOID, and therefore denied the application on January 17, 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."

The record reflects that the applicant has provided inconsistent testimony regarding his absence from the United States. The record is clear that the applicant was apprehended on entry on July 4, 1987, and was deported on August 10, 1987. Yet, the applicant contradicts the evidence of record and claims that he left the United States for El Salvador in August 1987 to accompany his girlfriend who was going to El Salvador to give birth; he was detained in September 1987, when he attempted to re-enter the United States; was granted voluntary departure; returned to El Salvador; and, after two or three days he re-entered the United States illegally. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As noted above, the applicant has failed to submit any independent, corroborative, contemporaneous evidence to rebut the content and substance of the statement he provided to the Service on July 4, 1987. 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. This decision constitutes a final notice of ineligibility.