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U.S. Citizenship and Immigration Services
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 02 235 63223

Office: TAMPA

Date: **APR 06 2009**

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. 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, Tampa, Florida. The matter was appealed to the Administrative Appeals Office (AAO), which remanded the application for further consideration and action. The director denied the application again, and certified the case for review to the AAO. The director's decision will be affirmed. The appeal will be dismissed.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on May 23, 2002.

The director initially denied the application on August 22, 2006, because the applicant failed to establish her continuous unlawful residence 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, in that she had been absent from the United States from December 1981 through August 1982. The applicant filed an appeal from that decision on August 25, 2006.

On February 25, 2008, the AAO remanded the case to the director for the purpose of issuing a Notice of Intent to Deny (NOID) the application and the issuance of a new final decision on the application. The director issued a NOID on October 7, 2008, and reissued a new decision denying the application on the same basis as the initial decision, on November 20, 2008. The matter is now before the AAO for review.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads 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. Although the term “emergent reason” 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 applicant claims the following: She first entered the United States as a nonimmigrant visitor in September 1979 and remained for an unspecified period of time. She again entered as a nonimmigrant visitor in October 1981 for two months – returning to Belize in December 1981 due to a legal matter – that she and her father were purchasing land but had some problems with that transaction that delayed her return to the United States. In January 1982, while in Belize, she applied for a “visa” (she does not specify what type of visa; presumably her previously issued non-immigrant visa had expired). The main reason she wanted to return to the United States was to secure a U.S. Social Security card for school, banking purposes, and a driver’s license. The visa application in Belize was denied because she did not have a job in Belize and was told not to reapply for six months. She then obtained employment in Belize as a “Field Home Economic Teacher” until July 1982, when she was able to obtain a nonimmigrant visa which she then used to enter the United States in August 1982. She has lived in the United States since that time except for visits to Belize in 1992 (due to her father’s death) and 1993 (due to her mother’s death).

By her own admission, the applicant was not present in the United States from December 1981 until August 9, 1982 - a period of more than seven months. Furthermore, the applicant has submitted no evidence of any emergent reasons delaying her return to the United States. It was the laws and procedures regarding visa issuance – not any emergent reason - that hampered her return.

It is concluded that the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and maintained continuous unlawful residence since such date through May 4, 1988, as required for eligibility for adjustment of status to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Thus, she is ineligible for permanent resident status under section 1104 of the LIFE Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

ORDER: The director’s decision of November 20, 2008, is affirmed. The appeal is dismissed. This decision constitutes a final notice of ineligibility.