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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: DALLAS Date: MAR 19 2009

MSC 02 252 62326

[redacted]

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).

IN 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had: 1) failed to establish that he satisfied the "basic citizenship skills" required under section 1104(c)(2)(E) of the LIFE Act.; 2) failed to submit the requested court dispositions; and 3) not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

It is noted that the applicant indicated on the Form I-290B, Notice of Appeal or Motion, that he was filing a combined motion to reopen and reconsider and not an appeal. Pursuant to 8 C.F.R. §§ 103.5(b) and 245a.20(c), motions to reopen a proceeding or reconsider a decision under section 245A of the Immigration and Nationality Act (the Act) shall not be considered. As such, the applicant's request will be treated as an appeal.

On appeal, the applicant provides the birth certificates of his children born in 1985, 1989, and 1995, proof of enrollment at Rancho Santiago Community College, court dispositions from the Riverside County Superior Court and a Form H-6 from the California Department of Motor Vehicles (DMV).

The first issue to be addressed is whether the applicant satisfied the "basic citizenship skills" required under the LIFE Act.

Under section 1104(c)(2)(E)(i) of the LIFE Act, regarding basic citizenship skills, an applicant for permanent resident status must demonstrate that he or she:

> (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
>
> (II) is satisfactorily pursuing a course of study (recognized by the [Secretary of Homeland Security]) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Secretary of Homeland Security may waive all or part of the above requirements for applicants who are at least 65 years of age or who are developmentally disabled. *See* 8 C.F.R. § 245a.17(c).

An applicant may establish that he or she has met the requirements of section 312(a) of the Act by demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language and by demonstrating a knowledge and

understanding of the fundamentals of the history and of the principles and form of government of the United States. 8 C.F.R. § 245a.17(a)(1) and 8 C.F.R. §§ 312.1 – 312.3.

An applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by providing a high school diploma or general educational development diploma (GED) from a school in the United States. 8 C.F.R. § 245a.17(a)(2). The high school or GED diploma may be submitted either at the time of filing the Form I-485 LIFE Act application, subsequent to filing the application but prior to the interview, or at the time of the interview. *Id.*

Finally, an applicant may also establish that he or she has met the requirements of section 1104(c)(2)(E)(i) of the LIFE Act by establishing that:

> He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

8 C.F.R. § 245a.17(a)(3).

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the initial LIFE interview shall be afforded a second opportunity after six months (or earlier at the request of the applicant) to pass the required tests or to submit the evidence described above. 8 C.F.R. § 245a.17(b).

The record reflects that the applicant was interviewed twice in connection with his LIFE application, on April 24, 2007, and again on November 20, 2007. On the both occasions, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. Furthermore, the applicant has not provided evidence of having passed a standardized citizenship test, as permitted by 8 C.F.R. § 312.3(a)(1).

On April 24, 2007, the director issued a Form I-72 requesting the applicant to submit evidence of enrollment or completion of attendance at a state recognized, accredited learning institution. The applicant, however, failed to respond to the notice.

On November 26, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to pass the English literacy and United States history and civics tests. The applicant was given the opportunity to submit evidence that would overcome the basis for denial of his application. The applicant, however, did not respond to this notice.

On appeal, the applicant submits documentation from Rancho Santiago Community College District, which reflects that the applicant was enrolled in two courses for Spring 2008.

The documentation from the Rancho Santiago Community College District does not provide any confirmation that it is "a state recognized, accredited learning institution," and has a course content that includes any instruction on United States history and government as required by 8 C.F.R. § 245a.17(a)(3). Furthermore, 8 C.F.R. § 245a.17(a)(3) requires that the applicant submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing the Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview. In the instant case, documentation from a state recognized, accredited learning institution should have been submitted to U.S. Citizenship and Immigration Services prior to or at the time of the applicant's second interview on November 20, 2007. The applicant failed to meet this requirement as the documentation from Rancho Santiago Community College District was presented *subsequent to* the applicant's interview. Assuming, arguendo, that the organization is a state recognized, accredited learning institution, the applicant still would not qualify for the benefit being sought as the document was presented subsequent to the applicant's interview.

As previously discussed, the applicant failed to meet the "basic citizenship skills" requirement of section 1104(c)(2)(E)(i)(I) of the LIFE Act because at his two interviews he did not demonstrate a minimal understanding of the English language. Therefore, the applicant does not satisfy either alternative of the "basic citizenship skills" requirement set forth in section 1104(c)(2)(E)(i) of the LIFE Act. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

The second issue that will be addressed is the applicant's criminal history in the United States.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. Section 245A(b)(1)(C) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(b)(1)(C); 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The FBI report dated April 18, 2007, reflects that on March 5, 2006, the applicant was arrested by the Sheriff's Office in Riverside, California for grand theft, burglary and receiving known stolen property. The FBI report also reflects that on March 23, 2006, the applicant was arrested by the Sheriff's Office in Santa Ana, California for driving on a suspended/revoked license.

On April 24, 2007, the director issued a Form I-72 requesting the applicant to submit a DMV printout and the final court dispositions of all arrests. The applicant, however, failed to comply with the request.

On November 26, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to provide the requested court disposition. The applicant, however, did not respond to this notice.

On appeal, the applicant submits a Form H-6 from the California DMV, which reflects the following:

1. On January 7, 1997, the applicant was arrested and subsequently charged with driving while license is suspended for other reasons, a violation of section 14601.1 VC, and failure to appear, a violation of section 40508(a) VC, both misdemeanors. On January 19, 1997, the applicant was convicted of both offenses. [redacted]
2. On January 18, 2001, the applicant was arrested and subsequently charged with driving while license is suspended for other reasons, a violation of section 14601.1 VC, a misdemeanor. On May 8, 2002, the applicant was convicted of this offense. [redacted]
3. On July 11, 2007, the applicant was arrested and subsequently charged with driving without a license, a violation of section 12500(a) VC, and failure to appear, a violation of section 40508(a) VC, both misdemeanors. On January 31, 2008, the applicant was convicted of both offenses. [redacted]

The applicant also submitted court dispositions from the Riverside County Superior Court in California, which reflect the following:

4. The applicant was arrested on March 5, 2006, for grand theft, a violation of 487 PC, a felony. On April 12, 2006, the applicant pled guilty to violating 487(a) PC, grand theft, exceeding $400.00. The applicant was sentenced to serve 150 days in jail, ordered to pay a fine and placed on probation for three years. [redacted]
5. The applicant was arrested on December 11, 2005, for failure to disclose origin of record, a violation of 653W(a) PC, a felony. On January 13, 2006, the applicant was charged with failure to disclose origin of recording or audiovisual work, a violation of 653W(b)(2) PC, a misdemeanor. On February 16, 2006, the applicant pled guilty to the misdemeanor offense. The applicant was ordered to serve 15 days in jailed, placed on probation for two years and ordered to pay a fine. [redacted]

The applicant is ineligible for the benefit being sought due to his one felony and six misdemeanor convictions. 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The final issue to be addressed is the applicant's prolonged absence from the United States during the requisite period.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"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.]

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 taken at the time of his interview at the Los Angeles Office on November 20, 2007. In his sworn statement, the applicant admitted that he departed the United States for El Salvador in 1982 and did not return until November 1983. The applicant also indicated on his Form I-687 application, item 35, to have departed the United States on September 1, 1982 and returned November 1983.

On November 26, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his prolonged absence from the United States during the requisite period. The applicant, however, failed to respond to this notice. On appeal, the applicant does not address this issue or provide any evidence to overcome the director's findings.

Although 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." 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, no evidence was provided to indicate that an emergent reason delayed the applicant's return to the United States within the 45 day period. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm.

1972)). The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon his by unexpected events.

Moreover, section 101(a)(33) of the Immigration and Nationality Act defines the term "residence" as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place, in fact, without regard to intent." The applicant has provided no evidence that he maintained any "principal, actual dwelling place" in the United States from September 1, 1982 to November 1983. Whether or not the applicant's departure from the United States to El Salvador was voluntary, his actual dwelling place during the period in question was out of the United States intent notwithstanding.

The applicant's 14-month stay in El Salvador during the requisite period 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. Therefore, the applicant has failed to establish that he resided in the United States in an continuous unlawful status 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). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

A review of the applicant's prior alien registration file ([redacted]) reveals that on April 22, 1988, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. The applicant indicted on the form that he departed his El Salvador on November 7, 1983 and arrived in the United States on November 17, 1983. On his Form G-325A, Biographic Information, signed April 22, 1988, the applicant indicated that he resided in his native country, El Salvador, from May 1962 to November 1983. The applicant listed his residence and employment in the United States from November 1983 and January 1984, respectively.

These factors establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States since prior November 17, 1983. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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