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U.S. Citizenship
and Immigration
Services

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FILE: 

Office: HOUSTON Date: DEC 28 2005

IN RE: Applicant: 

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:



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. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
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 on appeal. The appeal will be sustained.

The director concluded that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States. Accordingly, the director denied the application.

On appeal, the applicant asserts that she remained in Mexico after the birth of child due to medical problems. The applicant further asserts that at the time of interview she indicated that she traveled to Mexico on several occasions, but that none of her departures exceeded one month.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

“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.

At the time of her LIFE interview, the applicant admitted under oath and in a sworn statement that she entered the United States in 1981, and once a year she would depart to Mexico to visit her children and would remain in Mexico for one month. The applicant also admitted that she gave birth to a daughter in Mexico in 1985 and remained there for four months.

The director, in his Notice of Intent to Deny dated March 16, 2004, informed the applicant that her absences from the United States exceeded the 45-day limit for a single absence, and no evidence was provided to establish that her prolonged absence from the United States was due to an emergent reason.

The applicant, in response, asserted that she remained in Mexico for four months after the birth of her daughter in 1985 because she was born premature. The applicant asserted that due to a fire in her home in September 2003, she was not able to produce the original documents from the “release of hospital of my daughter’s birth.” The applicant submitted a fire report from the Harris County Law Enforcement, which acknowledged that a fire occurred on September 15, 2003 at the applicant’s address of record. The applicant also submitted a letter from [REDACTED]. The letter, however, was not accompanied by the required full English language translation.

On appeal, the applicant provides an additional copy of the letter from Dr. [REDACTED] with the required English translation, who indicated that the applicant’s daughter was born on January 26, 1985 with health problems and was required to remain at the hospital for three months. Based on Dr. [REDACTED] letter, the applicant’s prolonged absence from during 1985 was, in fact, due to an emergent reason that came suddenly into being and delayed the applicant’s return to the United States.

As neither the applicant’s sworn statement nor the record contains the *actual dates* the applicant departed the United States during each year of the requisite period (specifically 1988), it cannot be concluded that the applicant had exceeded the 180 day aggregate total for all absences during the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.