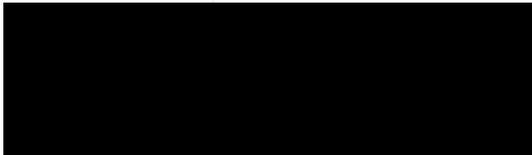


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



A handwritten signature in dark ink, appearing to be "L. J. Johnson", written over a light-colored background.

FILE:



Office: Los Angeles

Date: FEB 25 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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

A handwritten signature in dark ink, appearing to be "Robert P. Wiemann", written in a cursive style.

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

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In particular, the decision emphasized the definition of "resided continuously in the United States," set forth in 8 C.F.R. § 245a.1(c)(1), which precludes any single absence exceeding 45 days unless the applicant can establish that "emergent reasons" prevented a timely return. The director found that the applicant left the United States on August 27, 1987 and came back on October 31, 1987 and that this absence had exceeded the 45 day single absence limit breaking the continuity of her unlawful residence in the United States. The director noted that during the interview, the applicant stated under oath that the purpose of this trip was due to her ill grandmother and then later stated it was due to her ill father. The director also noted that the applicant's passport indicated that her trip was for her honeymoon.

On appeal, the applicant indicates that she has decided not to retain her previous attorney with regard to this appeal. The applicant states that the reason for her appeal is: "Justification of the misunderstanding occurred during my interview caused by emotional distress at the time." The applicant further states that she is bothered that the director continues to believe that she lied under oath by stating that her grandmother was ill when in fact it was her father. The applicant argues that she should not be denied for a mistake due to her nervousness after waiting so long for her final interview. The applicant resubmits the original copy of a declaration of her father's doctor for consideration.

It is noted that the record does not contain a signed Form G-28, Notice of Entry of Appearance as Attorney or Representative. The applicant's written withdrawal of the services of her attorney is acknowledged.

To be eligible for adjustment to permanent resident status under the LIFE Act, an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his or her continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

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 in the regulations 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 noted that during the interview, the applicant stated under oath that the purpose of her visit outside of the United States from August 27, 1987 until October 31, 1987 was due to her ill grandmother and that she later said that it was due to her ill father. The record shows that when the applicant was asked by the interviewing officer about her exit she said it was due to her ill grandmother and that she later changed her testimony when shown the Form I-687 Application for Status as a Temporary Resident under section 245A of the INA dated March 13, 1990 that she submitted for the record. In that document she had listed visiting her sick father as the purpose for the trip.

The declaration submitted by the applicant on appeal from Dr. [REDACTED] the Clinical Director of [REDACTED] in Sao Paulo, Brazil dated September 24, 2003 is as follows:

In attention to request of the Pupo's family I testify, after review this Center files, that Mr. [REDACTED] passed in a clinical avaluation [sic] in the beginning of August 1987 and was recommended to see an urologist for a special cancer treatment.

The record contains an affidavit dated September 25, 2003 from [REDACTED] in which she relates that she drove the applicant to the border of Mexico at Tijuana on August 26, 1987. The affiant further states that the applicant took a flight on August 27, 1987 from Mexico to Brazil to "visit her father that was very ill at that time." It is determined that the applicant has shown that the initial reason for her trip abroad was to visit her sick father. The record also shows that on October 29, 1987, after that applicant had been abroad for over sixty days, she married [REDACTED] in Sao Paulo. The applicant then obtained a "B1/B2" nonimmigrant visa from a United States consular officer in Sao Paulo on September 30, 1987 ostensibly to travel to the United States for a brief visit as the reason for the visa issuance is shown as "Honeymoon, 15-30 days." The applicant used that visa to reenter the United States on October 31, 1987.

Based on the record, it is determined that the applicant was absent from the United States for more than 45 continuous days in 1987 and that she has failed to establish that due to emergent reasons, her return to the United States could not be accomplished within the time period allowed. Therefore, this absence broke the continuity of her illegal residence in the United States during the qualifying period. The applicant has, therefore, failed to establish that she 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, she 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.