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



U.S. Citizenship
and Immigration
Services

22

FILE: [REDACTED] Office: Houston

Date: MAR 6 2005

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:

[REDACTED]

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. 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.

Robert P. Wiemann

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 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's absence from this country from April 1987 to July 1987 had exceeded the thirty (30) day limit for a single absence from the United States during the period between November 6, 1986 and May 4, 1988, as set forth in 8 C.F.R. § 245a.16(b).

On appeal, counsel asserts that the applicant's return to the United States from Pakistan had delayed due to an emergent reason. Counsel provides a statement from the applicant in support of this assertion.

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.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the notice of intent to deny, the district director quoted from 8 C.F.R. § 245a.16(b), which reads in pertinent part as follows:

...A single absence from the United States of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days absence unless the alien had advance parole or 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(s) allowed.

This regulation, however, has since been amended and the previous reference to a "thirty (30) day limit" on absences has been removed. The current, amended regulation reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

As cited above, the pertinent regulation is contained in 8 C.F.R. § 245a.15(c)(1), and provides a forty-five (45) day limit for a single absence from the United States, 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 applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA on December 17, 1990. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed a single absence from this country when he traveled to Pakistan to attend his grandmother's funeral from June 1987 to July 1987.

With the Form I-687 application, the applicant included the following documents:

- a "Form for Determination of Class Membership in *CSS v. Meese*," that is signed by the applicant and dated December 17, 1990, in which the applicant indicated that the purpose of his trip to Pakistan in 1987 was to attend a funeral;
- a photocopied receipt from Paragon Travel in Houston, Texas, which contains a partial date of May 5 and reflects the purchase of \$1,451.00 worth of airline tickets by this agency on the applicant's behalf for flights from Houston, Texas on May 9, 1987, arriving in London, England on May 10, 1987, from London, England on May 13, 1987, arriving in Jeddah, Saudi Arabia on May 14, 1987, from Jeddah, Saudi Arabia on May 23, 1987, arriving in Karachi, Pakistan on May 24, 1987, from Karachi, Pakistan to Jeddah, Saudi Arabia on July 16, 1987, from Jeddah, Saudi Arabia to London, England on August 18, 1987, and from London, England to Houston, Texas on September 3, 1987, and;
- an original letter signed by [REDACTED] a dental surgeon in Karachi, Pakistan that is dated May 1987. In this letter, [REDACTED] acknowledged the receipt of a sum of money from the applicant to be placed on account for "...dental treatment and oral prophylaxis [sic]."

The photocopied receipt from Paragon Travel tends to establish that the applicant was absent from the United States from May 9, 1987 to September 3, 1987, a period of 206 days. This document contradicts the applicant's listing for the dates of this absence as June 1987 to July 1987 at part #35 of the Form I-687 application. In addition, the letter signed by [REDACTED] reflects that the applicant paid a sum of money in advance to this individual in May of 1987, to be placed on account for dental treatment to be performed on subsequent dates.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on June 2, 2002. The record further shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Houston District Office on April 28, 2003. During the course of this interview, the applicant provided a signed sworn statement in which he stated that he that he traveled to Pakistan to attend his grandmother's funeral from April 1987 to July 1987. While the applicant had changed his testimony once again on the specific dates of his absence, the sworn statement provided at his interview established that he had been absent from the United States for over 45 days when he traveled to Pakistan in

1987 and, therefore, had exceeded the 45 day limit for a single absence as provided in 8 C.F.R. § 245a.15(c)(1).

In the absence of additional credible evidence from the applicant, it is determined that photocopied receipt from Paragon Travel demonstrates that he was absent from the United States from May 9, 1987 to September 3, 1987. The statements of counsel both in response to the notice of intent and on appeal only serve to reinforce the determination that the applicant's absence from this country in 1987 exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absences from the United States were 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."

Both in response to the notice of intent to deny and on appeal, counsel asserts that the applicant had only one absence from the United States in the requisite period and that his return to this country had been delayed due to an emergent reason. Specifically, Counsel contends that the purpose of the applicant's trip to Pakistan in 1987 was to attend the funeral of his grandmother. Counsel declares that the applicant also got married while in Pakistan, but was still planning on returning to the United States within thirty days. Counsel claims that the applicant had a dental emergency that forced him to undergo a series of unforeseen and unscheduled dental surgeries in Pakistan and, therefore, delayed his return to this country.

The photocopied receipt from Paragon Travel reflects that airline tickets were purchased in advance by this enterprise on the applicant's behalf for his departure from the United States on May 9, 1987, with a scheduled return to this country on September 3, 1987. As previously discussed, the applicant has consistently stated that the purpose of his trip was to attend the funeral of his grandmother as reflected on the Form I-687 application, the CSS determination form, and the sworn statement he provided at his interview on April 28, 2003. Although counsel contends that the applicant's dental surgeries were unforeseen, the testimony of [REDACTED] in his letter of May 1987 reflects that the applicant paid [REDACTED] a sum of money in advance to be placed on account for upcoming dental treatments. The record contains dental records that reflect the applicant began such treatment with a checkup and a "gross scaling" of the upper and lower jaws on May 13, 1987 and continued with a "root planning" on May 22, 1987, and fillings for cavities on May, 29, 1987, June 12, 1987, June 22, 1987, June 30, 1987, July 4, 1987, and July 10, 1987. These dental records demonstrate that the applicant underwent an extensive course of dental treatment, but fail to provide any evidence that this treatment was emergency in nature. While the applicant's departure from the United States on May 9, 1987 and subsequent travel to Pakistan may have been prompted by the death and funeral of his grandmother, the evidence contained in the record establishes that he also intended to be married and undergo a course of dental treatment prior to his scheduled departure from Pakistan on July 16, 1987. The receipt from Paragon Travel shows that the applicant was scheduled to depart from Karachi, Pakistan and arrive in Jeddah, Saudi Arabia on July 16, 1987, with the applicant remaining in Jeddah for over one month until his flight to London, England on August 18, 1987. The receipt reflects that the applicant was to remain in London for just over two weeks with a return flight to Houston, Texas on September 3, 1987. Neither counsel nor the applicant put forth any explanation as to why applicant further delayed his return to the United States on September 3, 1987, 55 days after he had completed his dental treatment in Pakistan on July 10, 1987.

Without any direct and independent evidence to the contrary, it cannot be concluded that applicant's absence from the United States of some 106 days from May 9, 1987 to September 3, 1987 was due to an "emergent reason" within the meaning of *Matter of C*, *supra*. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the fact that the applicant has failed to establish that an emergent reason delayed his return to this country after being absent from May 9, 1987 to September 3, 1987, that this absence exceeded the 45 day period allowable for a single absence, and the conflicting testimony contained in the record regarding the length of his absence, the applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.