



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Houston

Date: **SEP 20 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, 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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had been deported from the United States on October 10, 1984 and, therefore, had not continuously resided in this country from January 1, 1982 through May 4, 1988.

On appeal, counsel acknowledges the applicant was deported from the United States but asserts that returned to this country shortly thereafter.

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). Such an applicant shall be regarded as having resided continuously in the United States provided the applicant did not depart the country based upon an order of deportation. 8 C.F.R. § 245a.15(c)(3).

A review of the record revealed that the applicant possessed a separate Administrative file or A-file, [REDACTED] that has been consolidated into the current record of proceedings. The contents of this file show that in proceedings on January 30, 1984, the immigration judge ordered that the applicant be granted voluntary departure through March 30, 1984, with an alternative order of deportation to Mexico if the applicant did not comply with the grant of voluntary departure by such date. The record shows that the applicant subsequently failed to comply with the grant of voluntary departure. The record contains a warrant of deportation showing the applicant was subsequently deported to Mexico on October 10, 1984, and, therefore, did not maintain continuous residence for the required period.

Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Immigration and Nationality Act (INA) does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure. 8 C.F.R. § 245a.18(c)(1). Relief is provided within the LIFE Act for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. Clearly, regarding maintenance of continuous residence, it was not congressional intent to provide relief for absences under an order of deportation.

Counsel contends the applicant was only absent from the country for a short period of time as he returned to the United States after he had been deported. However, the fact that applicant returned to this country after being deported has no effect on the finding that he did not continuously reside in the United States for the requisite period as a result of his deportation.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant

was deported on October 10, 1984, and therefore did not maintain continuous residence. The applicant has failed to meet this burden.

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