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**U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES Date: **SEP 29 2005**

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).

ON BEHALF OF APPLICANT: Self-represented

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*

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 Acting District Director, Los Angeles, 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 exceeded the 45-day limit for a single absence, as well as the aggregate limit of 180 days for total absences, from the United States during the requisite period.

On appeal, the applicant asserts that she has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant admits "she was gone in excess of 45 days on two departures," but contends it was due to emergent reasons.

"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.

The record reflects that during the requisite period, the applicant gave birth to two children in Mexico; a daughter on October 17, 1983 and a son in April 1987.

At the time of her interview on August 24, 1992, the applicant informed the interviewing officer that she had departed the United States in 1980, 1983, and 1987. The applicant indicated that in April 1987, she gave birth to her son in Mexico and remained there for two to three months.

At the time of her LIFE interview on January 10, 2003, the applicant indicated that she went to Mexico to give birth to her children in 1983 and 1987 because her husband would not allow her see a doctor in the United States. The applicant asserted in 1983 she gave birth to a girl and stayed from October to December, and in 1987 she gave birth to a boy and stayed from March to May.

The director issued a Notice of Intent to Deny dated June 22, 2004, which advised the applicant that her absences in 1983 and 1987 from the United States exceeded the 45-day limit for a single absence as well as the aggregate of all of absences of 180 days. The director concluded that the applicant's absences had failed to establish continuous residence in the United States.

The applicant, in response, cited 8 C.F.R. § 245a.10 and stated in part:

...an absence of 45 days does not violate section 245a.10 which limits the amount of days for an applicant. Section 245a.10 limits an absence to 90 days for one absence and 180 days in the aggregate. Although applicant cannot remember exactly how many days she was gone, she is sure that she never left the United States for longer than 65 days. Thus, applicant did not exceed 90 day requirement and the aggregate total absences is approximately 130 days.

First, the applicant cites an incorrect section of the regulation regarding absences from the United States and second, her claim of 90 days for one absence is not supported by the regulation. The correct section, 8 C.F.R. § 245a.15(c)(1) clearly indicates that "no single absence from the United States has exceeded forty-five (45) days. Thus, the applicant's assertion is unfounded.

On appeal, the applicant states in part:

Although appellant admits she was gone in excess of 45 days on two departures, it was for “emergent reasons.” Appellant returned to Mexico in 1983 and 1987 because she could not afford to obtain healthcare for the birth of her children. Appellant had to return to Mexico in order to protect her baby and her own health. Appellant was not gone for 3 months on any departure. Appellant was not gone for more than 65 days on any departure. The aggregate of appellant’s absences does not exceed 180 days.

The AAO agrees with the applicant that the aggregate of her absences in 1983 and 1987 did not exceed 180 days. However, by the applicant’s own admission, each departure exceeded the 45-day period allowable for a single absence.

While not dealt with in the district director’s decision, there must, nevertheless, be a further determination as to whether the applicant’s prolonged absence from the United States was 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.”

An absence of more than 45 days must be “due to emergent reasons” significant enough that the applicant’s return “could not be accomplished.” In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant’s return to the United States more than inconvenient, but virtually impossible. That was not the applicant’s situation in this case. In her interview the applicant stated that she went to Mexico for the express purpose of having her children in her native country. This absence was not due to any “emergent reason” – *i.e.*, one that was unforeseen at the time of her departure – because the births of her children were the specific reason for the applicant’s absences from the United States. The applicant’s continued stay in Mexico after the birth of her children would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events. However commendable the applicant’s decision may have been to stay with her babies, the applicant’s extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of her control that prevented her from returning far sooner.

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 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). 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.