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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX Date: MAR 06 2007
MSC 02 134 64744

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Phoenix, Arizona, 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 not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. This was based on the applicant's admission to the United States as an H-2 temporary worker on January 26, 1988.

On appeal, counsel argued that the director erroneously applied the continuous unlawful presence requirements to the applicant's application. Counsel asserted that a brief and/or evidence would be submitted within 30 days. Subsequently, counsel requested that the appeal be adjudicated based on the record as no further documentation will be provided.

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).

Section 1104(c)(2)(B) of the LIFE Act states:

(i) 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, now the Secretary, Department of Homeland Security under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

The applicant on his Form I-687 application claimed employment as a groom for four employers from August 1981 through the date he filed his Form I-687 application in December 1990. The applicant provided employment verification letters as well as other documentation from these employers reflecting that he worked as a horse groom during and subsequent to the requisite period.

In response to a Notice of Intent to Deny issued on December 22, 2003, counsel asserted:

Since the record establishes that [the applicant] was front-desked at some point after he entered the United States with a lawful admission stamp, the Service should examine his continuous unlawful residence only from January 1, 1982 until the time [the applicant] was front-desked.

The record reflects that the applicant has submitted sufficient evidence to establish he resided in an unlawful status in the United States since before January 1, 1982 until January 25, 1988. However, a copy of the applicant's Mexico passport reveals that he entered the United States as an H-2 non-immigrant on January 26, 1988. Counsel has produced no documentary evidence that the applicant violated the terms of his visa by working without authorization from January 26, 1988 through May 4, 1988.

Counsel cites 8 C.F.R. § 245a.15(d)(4)(iv) and asserts that since the applicant "evinced his lawful entry with a passport stamp, *not with a Form I-94*, the Service should accordingly find that he continuously resided unlawfully during the statutory period." Counsel's assertion is without merit as every non-immigrant that legally enters the

United States is issued a Form I-94.

Counsel argues that because the applicant "is a *LULAC* class member, the Service should harmonize the regulatory requirement to continuously resided unlawfully during the statutory period with evidence of a lawful entry after the passage of IRCA." A review of the *LULAC* Settlement shows no findings that would coincide with counsel's argument.

The record contains a Form I-690, Application for Waiver of Grounds of Excludability that was submitted at the time the Form I-687 application was filed. There is a lengthy record of the applicant's employment in the United States as a horse groom prior to his admission as an H-2 visa holder. However, even when there is a record of prior unlawful residence in the United States, CIS cannot presume that an alien acquired a nonimmigrant visa and entry by fraud when there is evidence that the alien did engage in the employment for which the visa was issued. Were CIS to hold otherwise, any alien who had been in the United States unlawfully would never be able to regularize his/her status by departing and then acquiring a proper nonimmigrant visa.

The AAO cannot conclude that the applicant's admission to the United States in 1988 was obtained through fraud, as the applicant evidently worked for a petitioning H-2 employer. As a result of the applicant's lawful entry, the continuity of his claimed prior unlawful stay had been interrupted, making the applicant ineligible for permanent resident status.

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. See 8 C.F.R. § 245a.11(b). Because the applicant was in a lawful nonimmigrant status during the final months of the requisite period January 26, 1988 through May 4, 1988, he has failed to establish that he 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. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, it is noted for the record that the FBI report dated September 25, 2003 reflects that on July 12, 1990, the applicant was arrested by the Prescott Police Department in Arizona for driving under the influence, a misdemeanor. The final outcome, however, is unknown. The FBI report also reflects that on March 6, 1997, the applicant was arrested by the Phoenix Police Department for assault, a misdemeanor. No complaint was filed on the assault charge.

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