



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 211 61521

Office: HOUSTON

Date:

APR 01 2008

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. 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Houston, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not reside continuously in the United States, prior to January 1, 1982, and through May 4, 1988. The director also denied the application because the applicant failed to maintain continuous physical presence in the United States from November 6, 1986, through May 4, 1988.

On appeal, the applicant asks that she be given the chance to be someone that can help make a positive difference in people's lives. She states that she first came to the United States in 1980, that she returned to Mexico in 1982, due to a serious illness in the family, and, that she came back to the United States in December of 1989.

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 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.

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).

The record reflects that on April 29, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On her application, the applicant indicated that she last arrived in the United States in December 1989.

On June 24, 2003, the director interviewed the applicant for adjustment of status. During the interview, the applicant stated that she left the United States and returned to Mexico in 1982, approximately one year after she had first entered the United States. She stated that she resided with her mother in Mexico until 1989. In support of her application, the applicant submitted a report card from the Alief Independent School District for the 1989-1990 school year, and stated that this was the first time she had attended school in the United States.

On August 6, 2003, the director sent the applicant a Notice of Intent to Deny (NOID). The director stated that the applicant did not continuously reside in the United States in an unlawful status during the requisite time period. The director informed the applicant that she had 30 days from the receipt of the NOID to rebut or submit evidence to overcome the director's intent to deny his application. The applicant did not respond to the NOID.

On October 9, 2003, the director denied the application, concluding that the applicant was not continuously physically present in the United States during the requisite time period.

On appeal, the applicant asks that she be given the chance to be someone that can help make a positive difference in people's lives. She states that she first came to the United States in 1980, that she returned to Mexico in 1982, due to a serious illness in the family, and, that she came back to the United States in December of 1989.

The issue in this proceeding is whether the applicant continuously resided and was continuously physically present in the United States during the requisite period.

The applicant was the child of an alien who filed a written claim for class membership during the time when her father attempted to file or was discouraged from filing an application for legalization during the initial registration period. She is, therefore, eligible to file an application under the LIFE Act. However, the child of a LIFE Act - eligible parent must meet the same continuous residence and continuous physical presence requirements as all other LIFE applicants. Based on the applicant's own statements, she was living and going to school in Mexico from about 1982 to 1989. Therefore, the applicant was not continuously unlawfully residing in the United States 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.