

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2



FILE:

MSC 01 307 60692

Office: DALLAS

Date:

JUL 17 2008

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. This decision was based on the director's conclusion that the applicant had exceeded the forty-five (45) day limit for a single absence, as set forth in 8 C.F.R. § 245a.15(c)(1).

The applicant timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office, in which he stated that his reason for filing the appeal was to submit additional evidence. The applicant indicated on the Form I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than four years after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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. Section 1104(c)(2)(B) of the LIFE Act; 8 C.F.R. § 245a.11(b). "Continuous unlawful residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's own testimony in a sworn, signed statement taken at the time of his interview at the Dallas legalization office on January 25, 1991, under oath and in the presence of an officer of the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS). In his sworn statement, the applicant stated that he first entered the United States in 1981 and remained until 1983, and that he remained in Mexico for about two years before he returned to the United States in 1985. The applicant stated that during the time he was in Mexico, he helped his brother in construction. The record also contains a signed and sworn statement from the applicant's brother, [REDACTED], dated January 25, 1991, in which he also stated that the applicant arrived in the United States in 1981, stayed for three years, and then returned to Mexico for two years before reentering the United States in 1987.

In a Notice of Intent to Deny (NOID) dated September 3, 2003, the director notified the applicant that his absence had exceeded the 45-day limit permitted by the regulation, and that his extended absence could not be excused unless it was for emergent reasons. The applicant did not respond to the NOID.

On appeal, the applicant submits sworn statements from his sister and her guardian, who stated that they drove to Denver, Colorado, to see the applicant, who lived with his older brother, several times between October 1981 to May 1984. The applicant also submits a sworn statement from his brother, [REDACTED], who stated that the applicant lived with him in Denver from October 1981 to May 1984, when he moved to Arlington, Texas. The applicant submits a sworn statement from his brother, [REDACTED], who stated that the applicant lived with him in Arlington from May 1984 to August 1989.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submits no objective evidence, such as school records, income tax returns, lease agreements, or similar documentation to verify that he lived in the United States with either of his brothers, particularly from 1983 to 1987. The sworn statements of the applicant's family, without corroboration or independent, objective evidence do not suffice to meet the applicant's burden of proof.

The applicant did not allege that his two-year absence from the United States was due to emergent reasons. 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." In other words, the reason must be unexpected at the time of departure from the United States. According to the applicant, he assisted his brother in construction work in Mexico during his absence.

Accordingly, the applicant's self-admitted two-year stay in Mexico from 1983 to 1987 interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, 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, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, the applicant's admitted absence from the United States also exceeded the aggregate limit of one hundred and eighty (180) days for total absences during this period, as set forth in 8 C.F.R. § 245a.15(c)(1). Further, the applicant's evidence does not establish that he entered the United States prior to January 1, 1982.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

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