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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 02 228 61710

Office: LOS ANGELES

Date: MAR 27 2008

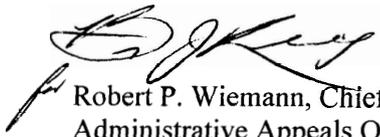
IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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, Los Angeles, California, reopened *sua sponte* and denied again by said Director. The matter 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 November 25, 1983, and, therefore, had not continuously resided in this country from January 1, 1982, through May 4, 1988.

On appeal, the applicant claims that he did not receive the Notice of Intent to Deny dated September 23, 2005.

The record reflects that the Notice of Intent to Deny was sent to the applicant's address of record, which he still maintains on appeal. The notice was not returned by the post office as undeliverable or unclaimed. The applicant's alleged failure to receive said notice was not due to Service error as the notice was properly served on the applicant by sending it to his address of record in compliance with 8 C.F.R. § 103.5a(a)(1). A courtesy copy of the notice will accompany the AAO's decision.

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).

The record reflects that on October 18, 1983, a Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien was issued. On November 25, 1983, the applicant was ordered deported from the United States. The record contains a validly executed Form I-205, Warrant of Deportation, showing the applicant was subsequently deported from this country to Mexico via afoot on November 25, 1983, 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 (the Act) 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.

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 Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.11. The applicant has failed to meet this burden.

Finally, it is noted that the record contains an FBI report dated March 30, 2004, which reveals that the applicant was arrested by the Glendale Police Department (California) on July 14, 1977, for petty theft, and on October 28, 1998, under the alias [REDACTED] for force/assault with a deadly weapon

not firearm: great bodily injury. The final outcome, however, is unknown as the applicant provided court documentation from the Los Angeles County Superior Court indicating that cases over ten years have been destroyed and/or purged pursuant to Court order.

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



U.S. Citizenship  
and Immigration  
Services



This File No.



Date:

September 23, 2005

**NOTICE OF INTENT TO DENY**

The purpose of this letter is to notify you of the intent to deny your Application for Adjustment of Status to Lawful Permanent Resident (LPR) pursuant to §1104 of Public Law 106-553, Legal Immigration Family Equity (LIFE Act) and Public Law 106-554, LIFE Act Amendments (LIFE Legalization) and Title 8 of the Code of Federal Regulations (CFR), §245a.

An eligible alien, as defined in §245a.10, may adjust status to LPR status under LIFE Legalization if:

- (a) He or she properly files, with fee, Form I-485, Application to Register Permanent Residence or Adjust Status, with the Service during the application period beginning June 1, 2001, and ending June 4, 2003;
- (b) He or she entered the United States (US) before January 1, 1982, and resided continuously in the US in an unlawful status since that date through May 4, 1988;
- (c) He or she was continuously physically present in the US during the period beginning on November 6, 1986, and ending on May 4, 1988;
- (d) He or she is not inadmissible to the United States for permanent residence under any provisions of §212(a) of the Immigration and Nationality Act (INA), except as provided in §245a.18, and that he or she:
  - (1) Has not been convicted of any felony or of three or more misdemeanors committed in the US;
  - (2) Has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and
  - (3) Is registered or registering under the Military Selective Service Act, if the alien is required to be so registered; and
- (e) He or she can demonstrate basic citizenship skills.

The U.S. Citizenship and Immigration Service (Service) has carefully considered your written application, accompanying documents and oral testimony during your interview on May 18, 2005 to reach this determination for the reasons given below.

It is your burden of proving by a preponderance of the evidence that you resided in the US for the requisite periods. 8CFR, §245a.12(e). The documents you submitted do not establish that you entered the US before January 1, 1982 and resided in continuous unlawful status since that date through May 4, 1988. 8CFR, §245a.20(2); 8CFR, §245a.15, 16, §245a.6 and §103.2(b).

On the day of your interview, you testified that you were deported to Mexico in 1983. You did not return to the United States until one year later. In your files, we also find documents that indicated of your deportation. Section 245A(g)(2)(B)(i) of the Act states: "An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation." Therefore you have not meet the statutory requirement of having "resided continuously" in the United States from before January 1, 1982 through the date you filed your application for temporary resident status.

You had filed an I-687 and it was found that you were ineligible for temporary resident status under SS201 of the Immigration Reform and Control Act or 1986 (IRCA). 8CFR 245a.6.

For the reasons explained above, the Service has found that you are not eligible to adjust status to LPR under LIFE Legalization.

You can provide rebuttal to this notice in support of your request. You have 30 days from the date of this notice to explain discrepancies or rebut any adverse information. Failure to respond to this notice within this allotted period will result in the denial of your request to adjust status under LIFE Legalization.

Please direct any response to the address on this letterhead. Mark both the envelope and the contents as follows:

Attention: File Number A# [REDACTED]

Rebuttal LOS **QB**

Sincerely,



Jane Arellano  
District Director  
U.S. Citizenship and Immigration Services  
Signed for by: Q. Banh

