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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEW YORK Date: NOV 04 2008  
MSC 01 359 61596

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 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 Director, New York, New York and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] act on behalf of the applicant, [REDACTED] is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).<sup>1</sup> As such, the decision will be furnished only to the applicant.

The director decided that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, the applicant asserts that the director's decision is in error as "I did submit the document repented [sic] within the time allotted. I am enclosing them again with my appeal."

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"Continuous 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.]

On April 17, 2007, the applicant was advised in writing of the director's intent to deny the application. In her notice of intent, the director indicated that, due to the applicant's absence from the United States from April 1987 to the middle of June 1987, he had failed to establish continuous residence in the United States.

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 at the time of his LIFE interview on March 15, 2004. The applicant asserted that he departed the United States in April 1987 to Mexico in order to get married. He was

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<sup>1</sup> See <http://www.usdoj.gov/eoir/profcond/chart.htm>

married on May 16, 1987 and returned to the United States in the middle of June 1987. The applicant was given 30 days in which to submit a response.

In denying the application on June 23, 2007, the director noted that the applicant had failed to submit additional evidence for consideration in support of his application.

On appeal, the applicant asserts that he did submit a response to the Notice of Intent to Deny and provided a photocopied affidavit dated October 3, 1989, from an affiant who indicated that he has known the applicant for nine years.

This affidavit has little probative value or evidentiary weight as the affiant makes no mention of the applicant's absence from the United States, provides no details regarding the nature or origin of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

The applicant had neither addressed nor provided any credible evidence to refute the director's findings.

Although emergent reason 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 and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States within the 45-day period. The applicant does not provide any independent, corroborative, contemporaneous evidence to support the statements made in response to the Notice of Intent to Deny. *Id.*

The applicant's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. 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 him from returning far sooner.

The applicant has, therefore, failed to establish that he resided in *continuous* unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act and the regulation, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Therefore, the applicant 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.