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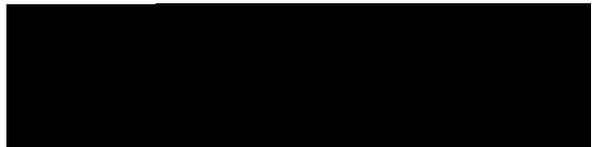
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



MSC 02 248 64955

Office: NEW YORK Date:

OCT 29 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:



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 (AAO) on appeal. The appeal will be dismissed.

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. This decision was based on the director's determination that the applicant's two-year absence from the United States was not brief.

On appeal, counsel argues that the death or serious illness of a family member is considered among the most cogent and compelling of reasons for the favorable exercise of discretion in many areas of the Immigration and Nationality Act (the Act).

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.]

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

At the time of his LIFE interview, the applicant indicated that he departed the United States to Brazil in November 1984 due to his mother's passing and he did not return to the United States until September 1986. The applicant also indicated that his father passed away in August 1986.

The record reflects that the applicant returned to the United States with a B-2 visa on September 25, 1986.

On April 4, 2006, the applicant was advised in writing of the director's intent to deny the application. In her notice of intent, the director indicated that the applicant did not provide any evidence to support his

mother's death. The director stated, in pertinent part, "You further provided no evidence of your need to remain for any reasons brought as a result of the aforementioned event, such as the need to get affairs in order, although your father passed away you could not have foreseen this event." The applicant was granted 30 days in which to submit additional evidence.

The director also noted that absences between November 6, 1986 and May 4, 1988 must be brief, casual and innocent for an applicant to maintain continuous physical presence requirement. The director determined that the applicant's two-year absence was not considered brief.

It is not necessary to determine if the applicant's absence was brief, casual and innocent as the absence occurred prior to November 6, 1986, and the regulation at 8 C.F.R. § 245a.15(c)(1) does not require it. As the applicant's absence has exceeded 45 days, his absence will be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), and evidence would be required to make a determination whether his prolonged absence from the United States was due to an emergent reason.

Counsel, in response, submitted the applicant's birth certificate and the death certificates of his parents, along with the required English translations. The death certificates indicate that the mother and father died November 14, 1984 and August 6, 1986, respectively. Counsel also provided a Certificate of Attendance from a doctor at Sao Francisco Hospital indicating that the applicant accompanied his father from 1984 to August 6, 1986.

Counsel also provided an affidavit from the applicant, who asserted, in pertinent part:

Although you say that I could not foreseen the event of my father's passing, it is not really correct. My father was not a well man for many years. He had a heart condition and had suffered a small stroke. Shortly after my mother dies, he was so afflicted that he suffered a major stroke and became paralyzed on one side of his body. He needed care with the activities of daily living. In addition to requiring this constant daily care, he lost his will to live, and my mother was not there any longer to help him. So, I stayed with him to help him and to try to give him a will to live.

My father was very close to me, and I became his primary caregiver during his last time after my mother died. I have brothers and sisters, but I was the only one who was not married and the others all had families of their own to care for. I was afraid that if I left him to return to the United States, I would never see him again, and he would feel that my absence was another loss he could not endure.

During the time I was with my dying father, I accompanied him to the hospital many times for care when he suffered serious setbacks, when he needed physical and respiratory therapy, and when he had a change in his condition for the worse.

In view of the above, I request that you determine that my absence from the United States was due to emergent reasons which could not be foreseen and were related to the illness and death of both my parents shortly after which I returned to the United States to resume my continuous residence.

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. Except for his own statement, the applicant does not provide any independent, corroborative, contemporaneous evidence to support the statements made in response to the Notice of Intent to Deny. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's prolonged absence appears to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant's decision may have been to stay with his father, 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 his control that prevented him from returning far sooner.

The applicant's 22-month stay in Brazil during the requisite period interrupted his “continuous residence” in the United States. Therefore, the applicant has failed to establish that he resided in the United States in an continuous unlawful status 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). Accordingly, 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.