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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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FILE:



Office: GARDEN CITY

Date:

APR 02 2009

MSC 01 342 60252

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988, and his continuous physical presence from November 6, 1986 through May 4, 1988.

On appeal, counsel for the applicant states that the director erred in denying the application, and that the evidence demonstrates the applicant's eligibility under the LIFE Act.

Section 1104(c)(2)(B)(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 that were most recently in effect before the date of the enactment of this Act shall apply.

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if 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.

On September 14, 2007, the director issued a notice of intent to deny (NOID) informing the applicant of the Service's intent to deny his LIFE Act application because he had exceeded the forty-five (45) day limit for a single absence from the United States in the requisite period as set forth in 8 C.F.R. § 245a.15(c)(1). The director based her determination on the applicant's sworn statement on March 20, 1989, at Honolulu, Hawaii, wherein he testified that he had been in India during the period from June or July 1987 through January or February 1988. The applicant was granted thirty days to respond to the notice.

In her denial notice, dated April 19, 2008, the director determined that the applicant's response to the NOID was insufficient to overcome the reasons stated in the NOID, and therefore denied the application.

The issue in this proceeding is whether the applicant has exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period, and therefore, is unable to demonstrate the requisite continuous residence and continuous physical presence in the United States.

In the absence of additional evidence from the applicant, it is determined that the absence from June or July 1987 through January or February 1988, exceeded the 45-day period allowable for a single absence. There is no indication that the applicant's prolonged absence from the U.S. was due to an "emergent reason." 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."

Contrary to counsel's assertion, the record pertaining to the applicant's absence is clear. The record of proceedings reveals that the applicant confirmed this prolonged absence by his own sworn testimony before an immigration officer on March 20, 1989, at Honolulu, Hawaii, when he attempted to gain entry into the United States. There the applicant testified that he had been in India during the period from June or July 1987 when he applied for a passport, through January or February 1988 when he obtained his passport.

The applicant has failed to submit any reliable independent, corroborative, contemporaneous evidence to rebut the evidence of record. In addition, the applicant has failed to submit evidence that his prolonged absence was for emergent reasons. In the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

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. Given this, he 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.