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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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FILE: [REDACTED] Office: NEW YORK Date: APR 21 2009

MSC 02 274 60396

[REDACTED] consolidated]
[REDACTED] consolidated]
[REDACTED] consolidated]

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:
[REDACTED]

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

The director denied the application after concluding that the applicant had failed to establish continuous unlawful residence since prior to January 1, 1982, due to the fact that he was absent for more than 45 days in 1985.

On appeal, the applicant asserts that his prolonged absence was due to illness, and submits an additional document as evidence.

"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 on hundred and eighty days (180) 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.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The director denied the application as a matter of discretion after concluding that the applicant's evidence was not credible, and that a prolonged absence from September 1985 to December 1985 broke his chain of continuous unlawful residence.

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 contains a separate file [REDACTED], which shows that the applicant was detained on February 25, 1987, and subsequently failed to appear for his deportation on June 15, 1987, thereby forfeiting the bond on which he was released.

Nevertheless, as noted by the director the applicant obtained a visa on September 13, 1985, in Karachi, Pakistan, and entered the United States on December 6, 1985. This represents a clear break in his chain of unlawful residence, and the record does not establish exactly when the applicant may have departed the United States for his multiple re-entry dates of September 1983, December 1985, and February 1987. The applicant has not submitted sufficient evidence to explain when and for how long he was actually absent prior to his re-entries in the United States. The applicant has submitted one letter which alleges to be a statement from a clinic in India asserting the applicant was admitted for pneumonia from October 11, 1985 to November 5, 1985, however this

fails to explain why the applicant did not return until December 6, 1985, or how long he may have been absent before his prior re-entries into the United States.

Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Immigration and Nationality Act (INA) 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. In this case the applicant was absent from the United States for a period greater than 45 days, possibly more than 180 cumulatively, and the record does not support that his absences were due to emergent reasons.

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, 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. 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.