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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20536-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: APR 21 2009

MSC 03 246 61140

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 Act (LIFE) Act was denied by the Director, New York, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status 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 conclusion that the applicant admitted that he had been absent from this country for three months in 1987, and therefore, exceeded the forty five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel asserts the applicant has submitted evidence to establish his eligibility, and calls the director's decision baseless, childish and absurd.

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

"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).

When something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the assertion or asserted claim is probably true. See *Matter of E--M-*, 20 I&N Dec. 77 (Comm. 1989).

Matter of C-, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

On August 2, 2007, the director sent the applicant a Notice of Intent to Deny (NOID) informing him that he was statutorily ineligible for LIFE Act legalization due to his admitted absence in 1987.

The applicant responded with an additional affidavit, but failed to specifically address the absence he listed on his Form I-687, Application for Temporary Residence.

On August 29, 2007, the director denied the application because the applicant had broken his chain of continuous unlawful residence and had failed to establish his continuous unlawful presence during the required period.

The applicant admitted that he had been absent from this country for a period over 45 days from at least July 1987, to October 1987, and therefore exceeded the 45 day limit for a single absence from the United States during this period. In addition, there is a boarding pass in the record showing a round-trip ticket from New York to Dhaka for the dates May 11 to September 10. This as well is an absence in excess of 45 days. The affidavits submitted by the applicant do not address this specific absence, and their statements that they saw the applicant every month of every year is clearly not accurate given the applicant's own representations. The applicant failed to address his absence in 1987 on appeal, and the record does not explain the inconsistent dates or the absences. In fact, the one affidavit submitted on appeal verifies the applicant's absence from July 15, 1987, to October 10, 1987. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absences of approximately 100 days exceeds the forty five day limit for a single absence.

In response to the notice of intent to deny and on appeal, counsel acknowledges the applicant's absence but asserts that his return to the United States had been delayed by emergent reasons. *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being." Visiting a daughter and sick mother the applicant abandoned in Poland is not an emergent reason which justifies the extended absence, and constitutes the reason the applicant returned to Poland in the first place.

Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absences of approximately 100 days exceeds the forty five day limit for a single absence.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

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