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FILE:

MSC 02 359 60300

Office: SACRAMENTO

Date: FEB 03 2009

IN RE: Applicant:

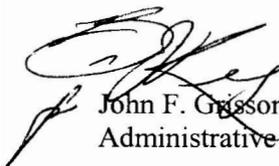
APPLICATION:

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, Sacramento, California, and is now 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 from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director determined that the applicant had 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, the applicant asserts that he has resided continuously in the United States from prior to January 1, 1982 through May 4, 1988.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“CSS”), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (“LULAC”), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (“Zambrano”). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of “[a]ny other relevant document(s).” See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

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 April 26, 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)(i). The director's determination was based on the applicant's statement at his interview, on November 17, 2006, in the presence of an officer of U.S. Citizenship and Immigration Services (USCIS), that he had departed the United States in December 1987 and returned at the end of February 1988. The director granted the applicant thirty (30) days to submit additional evidence.

In her denial notice, the director noted that the applicant responded to the NOID and stated that his absence from the United States for 2 months was brief, casual, and innocent. The director determined, however, the evidence submitted was insufficient to overcome the reasons for denial. In the Notice of Decision, dated September 19, 2007, the director denied the application because the applicant had 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, the applicant asserts that he has established the requisite continuous residence, and he has submitted affidavits to establish his continuous residence. The applicant submits some of the same affidavits previously provided, on appeal.

In the absence of additional evidence from the applicant, it is determined that the absence from December 1987 to the end of February 1988, exceeded the 45 day period allowable for a single absence. The applicant states that his prolonged absence was brief, casual, and innocent. It is noted that by his own sworn testimony, the applicant stated at his interview that the purpose of his trip was "To visit family and give exams for high school." Without documentary evidence to support the claim, the assertions will not satisfy the petitioner's burden of proof. The unsupported assertions of an applicant do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, there is no indication that the applicant's prolonged absence 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." There is no record of evidence to support a conclusion that the applicant prolonged absence was for an emergent reason. As discussed above, the applicant testified that his absence was "To visit family and give [take] exams for high school." There is no evidence of record to indicate that the need to visit family or take high exams came suddenly into being.

The record reflects that the applicant had a single absence from the United States that exceeded 45 days during the requisite period. 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.

Furthermore, the applicant’s claim that he has resided in the United States since prior to January 1, 1982 is questionable. It is noted that although the record reflects that the applicant testified that he departed the United States for the United Kingdom from December 1987 until the end of February 1988, he does not indicate any such absence on his Form I-687 application. It is also noted that the applicant, who was born in 1971, was 11 years old in 1982. It is reasonable to expect that the applicant would be able to provide medical records, or records from elementary schools in the United States during the requisite period. However, he does not provide any such documentation whatsoever.

The above discrepancies cast doubt on whether the applicant’s claim that he first entered the United States before January 1, 1982, and resided continuously in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988, is true. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite 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.