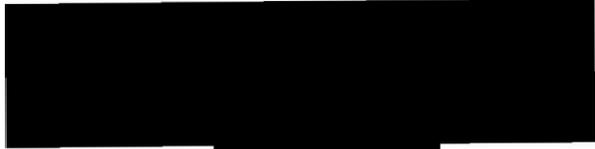


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U.S. Citizenship
and Immigration
Services

L2



FILE:

MSC 03 248 60545

Office: LOS ANGELES

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. Grisson, 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, Los Angeles, California, 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. 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, counsel for the applicant asserts that he has resided continuously in the United States from prior to January 1, 1982 through May 4, 1988. Counsel submits additional evidence on appeal.

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 19, 2006, 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 also determined that the applicant could not establish his continuous residence throughout the requisite period because of his entry date. The director's determination was based on the applicant's statement at his interview, on February 3, 1996, in the presence of an officer of the Immigration and Naturalization Service (INS), that he had first entered the United States in December 1982, and that in December 1985 he had departed the United States for Mexico, and returned to the United States in June 1986. The director determined that the applicant had a single absence of over 45 days, and therefore, the applicant cannot establish his continuous unlawful residence in the United States throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated August 31, 2006, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant failed to respond to the NOID.

On appeal, counsel for the applicant asserts that the applicant entered the United States prior to January 1, 1982, states that the applicant disavows having signed a sworn statement at his February 3, 1996 interview, that in 1985 he had departed the United States for Mexico and did not return until June 1986; that the Spanish interpreter at the interview made an error in translating his statement; and, that at the interview the applicant stated that he had departed the United States for Mexico in November 1988 and returned in January 1989.

As noted above, at the applicant's interview on February 3, 1996, he signed a sworn statement, stating that he first entered the United States in December 1982. Also, at that interview the applicant testified that he had departed the United States for Mexico in December 1985, and returned to the United States in June 1986. Essentially, the applicant denies the content of the sworn statement, and his statement at his interview as it pertains to his entry and his absence. The record is clear, however, that the statement was acknowledged, sworn to, and signed by the applicant before an immigration officer. The applicant cannot, therefore, avoid the record he has created. Although the applicant disavows knowing the contents of his sworn statement, he has failed to submit any reliable evidence to support his assertion, or to overcome his testimony and sworn statement of February 3, 1996.

In the absence of additional evidence from the applicant, it is determined that the absence from December 1985 to June 1986 exceeded the 45 day period allowable for a single absence. The applicant does not claim that his 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's prolonged absence was for an emergent reason.

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*.

In addition, contrary to counsel’s assertion, by the applicant’s sworn statement, it is clear that the applicant stated that he first entered the United States in December 1982. Therefore, the applicant cannot establish his continuous residence throughout 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.