

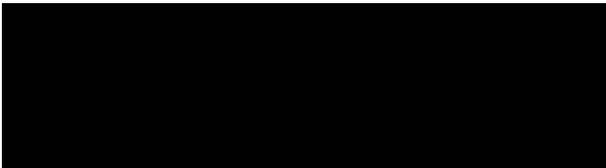
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U.S. Citizenship
and Immigration
Services

L2



FILE: [REDACTED]
MSC 02 211 61834

Office: HOUSTON Date: FEB 24 2009

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).

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director decided 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. This decision was based on the applicant's prolonged absences during this period.

On appeal, counsel puts forth a brief disputing the director's finding.

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

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The regulation at 8 C.F.R. § 245a.16(b) reads as follows:

For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the following:

1. A Form I-648, Memorandum Record of Interview, signed and dated December 28, 1993. The applicant indicated that he departed the United States on or about January 15, 1988 and did not return until April 23, 1988.
2. Item 35 of the applicant's Form I-687 application, indicates that the applicant was absent from the United States from June 1987 to December 1989 because his wife's parents were ill.

3. At item 33, on his Form I-687 application, the applicant did not claim any residence in the United States during 1988.
4. Accompanying the LIFE application is a document named List of Departures and Arrivals dated April 10, 2002. The applicant indicated his absences from December 1985 to February 1986 and September 1987 to October 1987 for his daughter's funeral.

On April 7, 2003, the director issued a Notice of Intent to Deny, which advised the applicant of the above absences and that the applicant had not established that these absences were due to emergent reasons and were brief, casual, and innocent.

The applicant, in response, asserted, in pertinent part:

I would like to inform you that since the first application I submitted there were problems because I did not speak the language [sic] and could not carry a conversation in English.

I would like to indicate my entries and exist like they are registered on my I-485.

First entry 1977, Last entry 09-90 to 10-90, 09-87-to 10-87 and 12-85 to 02-86.

I perfectly remember the exit I had on 10-87 to 10-87, since durning [sic] that time our family went through hard times because my daughter died. The other exit from 12-85 to 02-86 I also remember because that was the time that I got married, my exists were never made intentionally. On my form for I-687 the notary who filled my application made vary mistakes on my application since it indicated that I was out of the country form [sic] 06-87 to 12-89 with the propose [sic] to visit my inlaws [sic].

The applicant indicated that he resided at [REDACTED] Texas from 1986 to July 1987 and from July 1987 to December 1987 at [REDACTED], Chicago, Illinois. The applicant also indicated that he was employed at [REDACTED] from 1986 to July 1987 and from July 1987 to December 1987 at [REDACTED] in Chicago, Illinois. The applicant submitted: 1) copies of pay stubs from [REDACTED] from September 17, 1987 to November 5, 1987; 2) a photocopied PS Form 3806, Receipt for Registered Mail postmarked August 5, 1987; 3) an affidavit from [REDACTED] who indicated that the applicant resided with him from December 1987 to September 1989 at [REDACTED] Freeport, Texas; and 4) an employment affidavit from [REDACTED] who attested to the applicant's employment as a concrete finisher at [REDACTED] Construction from December 1987 to December 1989.

On appeal, counsel asserts that the applicant was not absent from the United States more than the allowable time and states, in pertinent part:

Applicant did not speak or understand English well either at the time of application or at his immigration interview. He was confused by trying to remember dates so far in the past, and his lack of command of the English language.

Counsel submits an affidavit from the applicant, who asserts that he has never been outside of the United States for more than eight days at a time and that he was never in Mexico from January 15, 1988 to April 23, 1988. The applicant states he was in Mexico from January 25, 1986 to February 9, 1986 for his February 2, 1986 wedding. The applicant asserts that at the time of his interview he did not understand some of the questions and "I might have given the wrong dates...." The applicant asserts, "I resided at [REDACTED] Freeport, Texas 77541, from June 1987 thru December 1989 with [REDACTED], he is a friend that I have known for years."

Counsel also submits an affidavit from the applicant's spouse, who asserts that the applicant was never in Mexico in 1988 and that "the only time my husband was in Mexico was one week before our wedding, which was from January 25, 1986 thru February 9, 1986."

The statements issued by the applicant and counsel have been considered. However, the AAO does not view them as substantive enough to support a finding that the applicant resided *continuously* in the United States during the requisite period, as he has presented contradictory and inconsistent statements and documents, which undermines his credibility. Specifically:

1. The pay stubs from [REDACTED], and the affidavits from [REDACTED] and [REDACTED] attesting to the applicant's employment and residence, respectively from 1987 to 1989 raise questions to their authenticity as the applicant did not claim to have been employed by either employer and to have resided at 321 Ave C, Freeport, Texas on his Form I-687 application. The PS Form 3806 only serves to establish the applicant may have been present in the United States on August 5, 1987.
2. The Form I-687 application does not reflect that anyone other than the applicant completed the application, as no information is listed in items 48 and 50 of the application; items 48 and 50 of the application requests the name, address and signature of the person preparing the form.
3. In response to the Notice of Intent to Deny, the applicant indicated that he resided at [REDACTED], Houston, Texas from 1986 to July 1987 and from July 1987 to December 1987 at [REDACTED] Chicago, Illinois. However, on appeal, the applicant amends his statement to indicate he was residing at [REDACTED] Freeport, Texas 77541 from June 1987 thru December 1989.
4. On appeal, the applicant asserts that he has never been outside of the United States for more than eight days at a time. However, in response to the Notice of Intent to Deny, the applicant indicated that he was absent from the United States from December 1985 through February 1986. In addition, [REDACTED], in her affidavit, attested to the applicant's absence of 30 days in October 1987.
5. The applicant contends that at the time of his interview on December 28, 1993, he did not understand some of the questions asked. However, nine years later, at the time of his LIFE interview on March 11, 2003, the applicant signed a statement dated March 11, 2003, indicating that in December 1985 he departed the United States to Mexico to get married and remained in Mexico for a month and a half. The applicant also indicated that in September 1987 he departed the United States to Mexico because his

wife's parents were ill and remained in Mexico for approximately 15 to 20 days. It is noted that the applicant passed the *English* literacy test at the time of his LIFE interview.

6. The applicant indicates that his marriage occurred on February 2, 1986. However, the applicant indicated on his Form G-325A, Biographic Information, signed and dated April 10, 2002, that he was married in Mexico on December 7, 1985.
7. According to the interviewing officer's notes, at the time of the applicant's first interview on January 18, 1991, the applicant indicated that he did not apply for amnesty during the required period because he was residing in Mexico.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Although emergent reason is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. That was not the applicant's situation in this case. The applicant's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. The applicant's extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not "due to emergent reasons" outside of his control that prevented him from returning far sooner.

The applicant's stay in Mexico during the requisite period interrupted his "continuous residence" in the United States. Therefore, the applicant has failed to establish that he resided in the United States in an continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Accordingly, the applicant 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.