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U.S. Citizenship
and Immigration
Services

PUBLIC

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FILE:

MSC 02 054 62110

Office: HOUSTON

Date:

FEB 26 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).

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 (AAO) 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.

On appeal, counsel asserts that the applicant has submitted extensive evidence of his continuous residence in the United States during the requisite period.

An applicant for permanent resident status under section 1104 of the LIFE Act 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. Section 1104(c)(2)(B) of the LIFE Act and 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.]

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. 8 C.F.R. § 245a.11(c).

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.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. However, the issue in this proceeding is the applicant’s prolonged absence in 1988 during the requisite period. The record contains two notarized Form for Determination of Class Membership

dated June 14, 1990 and June 23, 1994. The applicant indicated on both forms that he departed the United States to Mexico on February 1, 1988 and did not reenter the United States until September 1988.

Item 35 of the Form I-687 application requests the applicant to list all absences from the United States since his entry. The applicant listed three absences; during February 1984 and September 1986 and from February 1988 to September 1988.

Item 32 of the Form I-687 application requests the applicant to list his children's names and dates of birth. The applicant indicated that he has six children born in Mexico; three of which were born prior to January 1, 1982 and the remaining three were born on February 8, 1982, July 21, 1983, and May 30, 1986, respectively.

In an affidavit dated November 16, 2001, the applicant indicated that all of his absences prior to 1988 were only for two or three weeks at a time. The applicant asserted that in 1988 he had a hernia and "left for Mexico at the end of February of 1988." The applicant further stated, in pertinent part:

I was able to get my surgery performed that same mont, [sic] but the doctor decided I needed a second opinion, which he did on April 5, 1988. After the second operation the doctor required me to have a number of follow-up visits (that I had not thought would be necessary). He therefore did not finally release me until July 8, 1988.

The applicant stated that he remained outside of the United States until August 1988 due to lack of finances. As evidence of his hernia operation, the applicant provided a copy of his "Hospital Registration Card."

At the time of his LIFE interview, the applicant indicated that during the requisite period, he departed the United States on four occasions; February 1984, September 1986, February 1988 and March 1988.

On November 17, 2004, the director issued a Notice of Intent to Deny, which advised the applicant that his testimony at the time of his LIFE interview regarding his absences from the United States was not consistent with his children's dates of birth. The applicant was advised that it appeared from the record that the applicant did not reside continuously in the United States during the requisite period. The director also advised the applicant that he had failed to maintain continuous physical presence in the United States from November 6, 1986 to May 4, 1988 as he did not establish that his 1988 departure was brief, casual, and innocent.

Counsel, in response, asserted that the applicant departed the United States in February 1988 intending to be gone for less than 30 days, but due to documented and medical problems his return was delayed. Counsel asserted, in pertinent part:

Whether the applicant's less than three-week trips to Mexico were in October of 1982 and August of 1985, instead of February 1984 and September of 1986, is immaterial to

his claim that he continuously resided in the United States from before 1981 until May of 1988, because he remains eligible regardless of the specific dates of those trips. Simply put, whether they occurred on the dates his faulty memory indicated, or nine months prior to the birth of his children, those trips do not disqualify him.

Counsel submitted an affidavit from the applicant, who stated, in pertinent part:

To the best of my recollection is that between January 1, 1982 and May 5, 1988, I went to Mexico a total for four times. Three of those visits were brief, lasting one to three weeks, but the fourth, which was in 1988, lasted from about February until about August of that year, because I ended up having unexpected medical complications and could not return.

Regarding the inconsistent dates of departure and his children's dates of birth in Mexico, the applicant stated, in pertinent part:

When the Immigration Officer at my interview asked me about how many times I had been to Mexico, I told her four times, but I meant four times between 1981 and 1988. I did not understand her question to ask me how many times I had gone to Mexico from 1986 forward. I recognized that maybe I went to Mexico more than four times between 1981 and 1988; I don't think so, but my memory is not that good and things that happened long ago.

What I am absolutely sure of is that none of my trips to Mexico between 1981 and February of 1988 lasted more than three weeks. I do not remember the specific dates of those trips; however, I do know that they lasted no more than three weeks because I knew then and I know now that I could not stay in Mexico any longer than that because I had to work to support myself and my family and my work was here in the United States.

The director, in denying the application, noted, in pertinent part:

The record remains that you had children born in Mexico during the required period, and by your oral testimony and affidavits, your departure from the United States was during that period. Therefore, the Service had determined that your departures were not brief, casual and innocent....

It is not necessary to determine if the applicant's absences in 1982 and September 1986 were brief, casual, and innocent as these absences occurred prior to November 6, 1986, and the regulation at 8 C.F.R. § 245a.15(c)(1) does not require it. However, the applicant's 1988 absence from the United States will be examined utilizing 8 C.F.R. §§ 245a.11(c) and 15(c)(1) and evidence would be required to make a determination whether his prolonged absence from the United States was due to an emergent reason.

The term “casual” is not defined in the statute, though its parameters can be gleaned in the regulatory guideline that “temporary, occasional trips abroad” are not inconsistent with an alien’s “continuous physical presence” in the United States. *See* 8 C.F.R. § 245a.16(b). Nor is the term “innocent” defined in the statute. It seems logical, however, that an absence would be “innocent” if it does not involve illegal activities or other conduct in conflict with United States national interests and is “consistent with the policies reflected in the immigration laws of the United States,” as the regulation requires. The AAO, however, does not consider the applicant’s 1988 absence to be brief.

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. However, in the instant case, that was not the situation. There is no evidence to indicate that an emergent reason delayed the applicant’s return to the United States on or before March 16, 1988. Except for his own statement and his hospital registration card, which only reflects entries from April 5, 1988, the applicant does not provide any independent, corroborative, contemporaneous evidence to support his statements. *Id.* Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, this absence was not due to any “emergent reason” – *i.e.*, one that was unforeseen at the time of his departure – because seeking treatment at a medical facility in Mexico was the specific reason for the applicant’s absence from the United States. The applicant’s prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events.

The applicant’s three-month 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