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U. S. Citizenship and Immigration Services
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FILE: [REDACTED]
MSC 02 142 61412

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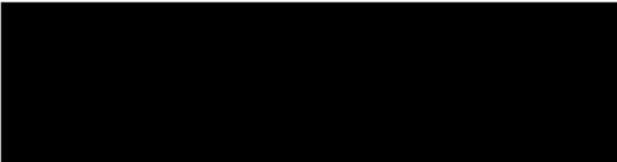
Date: JUN 08 2009

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. Grigs ; 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 denied the application on the ground that the applicant failed to establish that she entered the United States before January 1, 1982, and thereafter resided continuously in the United States in an unlawful status through May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has established eligibility under the LIFE Act. Counsel submits additional evidence on appeal.

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 4, 2003, the director issued a notice of intent to deny (NOID) informing the applicant of the Service’s intent to deny her LIFE Act application because the applicant failed to establish her continuous physical presence from November 6, 1986 through May 4, 1988. The director noted that the applicant stated at her interview on March 31, 2003, and stated in a sworn statement that she had been absent from the United States from November 23, 1983 to January 3, 1984; as well as from September 28, 1987 to November 3, 1987, an absence of 37 days, when she left the United States to give birth to her child in Honduras. The director determined that the 1987 absence was neither brief, casual, nor innocent. The applicant was granted thirty days to respond to the notice.

In his denial notice, dated February 24, 2004, the director determined that the applicant’s response to the NOID was insufficient to overcome the reasons stated in the NOID, and therefore denied the application.

On appeal, counsel asserts that the director erred in determining that the applicant’s absence of over 30 days was not brief, casual, and innocent; and that the applicant traveled to Honduras to give birth so as to avoid becoming a public charge to the United States. Counsel contends, therefore, that the applicant’s absence is permitted under regulations.

The applicant states that she has submitted sufficient evidence that her prolonged absence was for an emergent reason. The record reflects that the applicant testified and signed a sworn statement during her interview, and indicated on her Form I-687 that she had departed the United States for Honduras and had been absent from the United States from November 23, 1983 to January 3, 1984; and, again from September 28, 1987 to November 3, 1987, an absence of 37 days. As determined by the director, the applicant's absence for 37 days in 1987 was not brief, casual, and innocent.

The director, however, erred in applying a thirty (30) day limit for a single absence in the period from November 6, 1986, to May 4, 1988, as set forth in 8 C.F.R. § 245a.16(b). This regulation has been amended and the previous reference to a "thirty (30) day limit" on absences has been removed. The current, amended regulation 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. Accordingly, the director's finding in this matter will be withdrawn.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The ultimate issue in this proceeding is whether the applicant has met her burden of proof by furnishing sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

The applicant has submitted questionable evidence. It is noted that the applicant stated in her response to the NOID that she had been nervous during her interview, and that due to a language barrier, she failed to correct the error in her application. She claimed that her absences were not as stated on her Form I-687 application, but were from December 23, 1983 to January 23, 1984; and, from October 5, 1987 to November 3, 1987. The applicant seeks to modify the record. It is noted, however, that although the applicant claims that she made an error in the dates on her Form I-687 application, she provided an affidavit from [REDACTED], attesting that she had departed the United States in September 1987 and returned in November 1987. These contradictions in the evidence the applicant provided points to a lack of veracity and casts doubt on her claim that her departure in 1987 was only from October 5, 1987 to November 3, 1987.

In an attempt to establish her continuous residence, and continuous physical presence, the applicant provided affidavits and letters attesting to her residence in the United States since April 1981, and she indicated on her Form I-687 application, and in her affidavit, that she first entered the United States in April 1981. However, the record of proceedings also reveals that the applicant indicated different dates of entry on her Application(s) for Temporary Protected Status, Form(s) I-821. On her Form I-821, filed on July 10, 2007, the applicant indicated that she first entered the United States in March 1981; and, on her Form(s) I-821, filed on June 7, 2006, July 5, 2000, and May 20, 1999, the applicant indicated that she first entered the United States in February 1981. The applicant has indicated three different months in 2007 as the date when she first entered the United States. It is noted that there is not an explanation in the record for these discrepancies.

These discrepancies cast considerable doubt on whether the applicant resided in the United States since January 1981 as she claims. 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 she continuously resided in the United States in an unlawful status during the requisite period.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, continuous unlawful residence through May 4, 1988, and continuous physical presence from November 6, 1986 through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, she 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.