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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
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FILE:

[REDACTED]  
Office: NEW YORK  
[REDACTED], consolidated herein]  
MSC 01 282 60648

Date: JUN 08 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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, New York, New York, 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 his continuous physical presence from November 6, 1986 through May 4, 1988. The director noted that the applicant had a single absence of 39 days which the director deemed was not brief, casual or innocent, as it exceeded a single absence of 30 days.

On appeal, the applicant asserts that he has submitted sufficient evidence to demonstrate the requisite continuous residence and continuous physical presence and his eligibility under the LIFE Act. The applicant also states that the director erred in denying his application for having been absent for 39 days as that absence did not exceed a single absence of 45-days.

**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 January 4, 2008, 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 the applicant failed to establish his continuous physical presence from November 6, 1986 through May 4, 1988. The director noted that the applicant stated at his interview on April 14, 2003, and submitted documentation, including affidavits, confirming that he had departed the United States on August 15, 1987 and returned on September 23, 1987, an absence from the United States of 39 days. The director determined that the prolonged absence was neither brief, casual, nor innocent. The applicant was granted thirty days to respond to the notice.

In her denial notice, dated March 8, 2008, 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.

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 issue in this proceeding is whether the applicant has established his continuous physical presence from November 6, 1986 through May 4, 1988.

The applicant claims that he did not have a single absence of over 45-days, and that he has submitted sufficient evidence in the form of affidavits to establish the requisite continuous residence and continuous physical presence. However, the record of proceedings contradicts the applicant’s claim. The record of proceedings contains a Record of Sworn Statement in Affidavit Form, before an Immigration Officer [under ██████████], dated September 20, 1996, wherein the applicant testified that “I [he] was in the U.S. from January 1981 to May of 1987;” and, he (and his parents) went back to Pakistan because his parents were having personal problems, and he came back to the United States in 1992. Given this evidence, the record is clear that the applicant has had a prolonged absence of over 11 months (since May 1987) during the requisite period. Therefore, the applicant cannot establish the requisite continuous physical presence in the United States.

Therefore, based on the above, the applicant has failed to establish his 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, 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.