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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC 03 221 60877

Office: NEW YORK

Date: MAY 04 2009

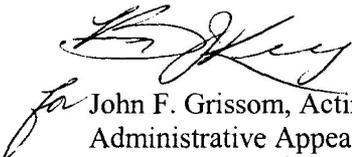
IN RE: Applicant: [REDACTED]

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.


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 residence from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant asserts that he has submitted sufficient evidence to demonstrate the requisite continuous residence and his eligibility under the LIFE Act. The applicant 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 9, 2007, 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 the requisite continuous residence. The director noted that the applicant stated at his interview that he had departed the United States for Bangladesh on July 10, 1987 and did not return until September 14, 1987, a single absence of over 45 days. The director also noted that the affidavits submitted appeared neither credible, nor amenable to verification. The applicant was granted thirty days to respond to the notice.

In her denial notice, dated July 5, 2007, 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 issue in this proceeding is whether the applicant has established his continuous residence throughout the requisite period.

On appeal, the applicant does not deny that he had a single absence in excess of 45 days. The applicant asserts, however, that the absence was due to an emergent reason because it was due to his

wife's illness in Bangladesh. With his appeal, the applicant submits a photocopy of a letter from [REDACTED], of the Dhaka Medical College Hospital, dated October 7, 2007. [REDACTED] states that the applicant's wife, [REDACTED], had been hospitalized from July 8, 1987 to September 10, 1987, due to various medical conditions.

The applicant's claim that his prolonged absence was due to his wife's medical condition is not credible. It is noted that the letter from [REDACTED] is not an original, but a photocopy, and there is no documentation, such as medical records, from the Dhaka Medical College Hospital, to substantiate the claim that the applicant's wife had been under medical treatment as the applicant claims. 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.

In the absence of additional evidence from the applicant, it is determined that the absence from July 10, 1987 to September 14, 1987, exceeded the 45-day period allowable for a single absence. The applicant has failed to establish 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." As discussed above, 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.

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 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.