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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  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

[REDACTED]

Office: HOUSTON

Date:

**MAY 15 2009**

MSC 01 306 60566

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:

[REDACTED]

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, Houston, Texas, 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 that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The director determined that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel for the applicant asserts that the applicant has resided continuously in the United States from prior to January 1, 1982 through May 4, 1988. Counsel also states that the applicant's absence was brief, casual, and innocent. Counsel submits additional evidence on appeal.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

**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 October 22, 2003, 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 he had exceeded the forty-five (45) day limit for a single absence from the United States in the requisite period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The director's determination was based on the applicant's statement at his interview, on August 18, 2003, in the presence of an officer of U.S. Citizenship and Immigration Services (USCIS), that he had departed the United States, for Mexico, that same day, October 14, 1987, and returned to the United States on January 2, 1988. The director determined that the applicant had been absent for approximately 45 days, and therefore, the applicant cannot establish his continuous unlawful residence in the United States throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 5, 2004, the director denied the instant application. The director noted that the applicant's response to the NOID failed to overcome the reasons for denial as stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant's absence was due to an emergent reason because the applicant departed the United States on October 14, 1987 as his fiancé's father passed away in Mexico on October 14, 1987; and, the applicant remained in Mexico to get married on December 26, 1987, and returned to the United States on January 2, 1988. Counsel provides a death certificate (in Spanish), with an English translation, which indicates that [REDACTED] died, in Mexico, on October 14, 1987; and, a marriage certificate, indicating that the applicant was married to [REDACTED], on December 26, 1987, in Mexico.

As noted above, at the applicant's interview on August 18, 2003, the applicant testified he had departed the United States for Mexico on October 14, 1987, and returned to the United States on January 2, 1988. The applicant does not deny this on appeal.

In the absence of additional evidence from the applicant, it is determined that the prolonged absence from October 14, 1987 to January 2, 1988 exceeded the 45-day period allowable for a single absence. The applicant claims 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." Counsel has provided a death certificate which shows that the applicant's fiancé's father died, in Mexico, on October 14, 1987, and, a marriage certificate for the applicant that shows that he married in Mexico on December 26, 1987. However, counsel has not provided any evidence to establish that the applicant's prolonged stay in Mexico was necessitated by an event that came "unexpectedly into being." By his own admission, the applicant remained in Mexico for over two months after the death of his fiancé's father. There is no basis to conclude that the applicant's presence was necessary for over two months in Mexico as a result of his fiancé's father's death. There is also no evidence to support a conclusion that the applicant's determination to remain in Mexico to get married on December 26, 1987, and return to the United States on January 2, 1988, was for a reason "coming unexpectedly

into being.” By his own admission, the applicant made a conscious decision to remain in Mexico until January 2, 1988, and the record does not 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.

The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 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.