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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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FILE: [REDACTED] Office: HOUSTON Date: **FEB 04 2010**
MSC 02 193 62217

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).

IN BEHALF OF APPLICANT: Self-represented

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.

Perry Rhew
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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant: 1) failed to appear for fingerprinting; and 2) had exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period.

On appeal, the applicant asserts that she did submit a response to the Notice of Intent to Deny dated April 11, 2008.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 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.]

The regulation at 8 C.F.R. § 103.2(b)(13)(ii) states if an individual does not appear for a scheduled appointment and U.S. Citizenship and Immigration Services does not receive a rescheduling request or change of address by the appointment time, the application shall be considered abandoned and denied.

The regulation at 8 C.F.R. § 245a.12(d) states that each LIFE application must be accompanied by the fee for fingerprinting, if the applicant is between the ages of 14 and 79.

The first issue to be addressed is the applicant’s failure to appear for fingerprinting.

The record reflects that on October 14, 2003, March 9, 2004, August 6, 2004, notices were sent to the applicant at her address of record, advising her to appear at the U.S. Citizenship and Immigration Services (USCIS) Application Support Center in Houston, Texas, on November 13, 2003, April 6, 2004 and August 20, 2004, respectively, to be fingerprinted. The applicant failed to appear, and the record contains no evidence that a request to reschedule was received by USCIS.

On April 11, 2008, the director issued a Notice of Intent to Deny, which advised the applicant of her failure to be fingerprinted for her LIFE application.

The record, however, reflects that on December 7, 2007, USCIS received documentation from the applicant establishing that on August 30, 2006, the applicant appeared at an USCIS Application Support Center in Houston and was fingerprinted. The Form I-485 security check checklist also reflects that the applicant had been fingerprinted on August 30, 2006. Accordingly, the director's finding regarding the applicant's failure to be fingerprinted is withdrawn.

The second issue to be addressed is the applicant's absence during the requisite period.

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's sworn signed statement taken at the time of her interview at the Houston legalization office on September 29, 1994. In her sworn statement, the applicant asserted that she departed the United States for Mexico on December 31, 1986, where she remained until March 15, 1987.

On April 11, 2008, the applicant was advised in writing of the director's intent to deny the application. In her notice of intent, the director indicated that, due to the applicant's absence from the United States from December 31, 1986 to March 15, 1987, she had failed to establish continuous residence in the United States.

The applicant, on appeal, asserts that she submitted a response to the Notice of Intent to Deny dated April 11, 2008, and would be submitting evidence to support her assertion. A review of the record reveals no response to the Notice of Intent to Deny and, to date, no evidence has been submitted. 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)).

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 within the required 45-day period. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events.

The applicant's two and a half months stay in Mexico during the requisite period interrupted her "continuous residence" in the United States. Therefore, the applicant has failed to establish that she resided in the United States in a 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.