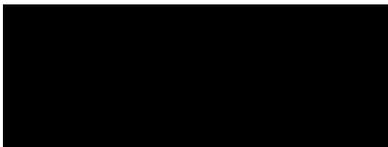




U.S. Citizenship
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Services

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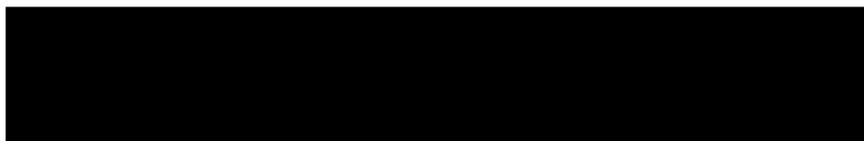
Office: HOUSTON

Date:

APR 11 2007

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director decided that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during this period.

On appeal, the applicant asserted that he did submit a response to the Notice of Intent to Deny and provided copies of the documents that were previously provided.

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, 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. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

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 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.]

On his Form I-687 Application for Status as a Temporary Resident signed on September 11, 1990, the applicant indicated at item 35 that he departed the United States on October 15, 1987 to visit his family due to an emergency and returned on January 5, 1988. Likewise, at item #9 on the Form for Determination of Class Membership the applicant indicated the same departure and return dates. At item #10 of said form, the applicant indicated that he did not file an application for legalization on or before May 4, 1988 because "I was informed that I was not eligible [sic] to apply because I had been out of the United States for 40 days in 1987."

At the time of his LIFE interview on September 2, 2003, the applicant admitted in a sworn statement that he departed the United States on October 15, 1987 and returned on January 5, 1988. The applicant indicated that he clearly remember the absence dates "because when I applied in 1990, I collected all the paper, letter and make sure all the date are correct."

On March 3, 2004, the applicant was advised in writing of the director's intent to deny the application. In his notice, the director indicated that due to the applicant's absence from the United States for over 45 days, he had failed to establish continuous residence in the United States. The director also advised the applicant that he had not established that said absence was due to emergent reasons.

The director, in denying the application, noted that the applicant had failed to respond to the notice. On appeal, the applicant submits a photocopy of a certified mail receipt, a domestic return receipt, and a track and confirm printout from the United States Postal Service website, which indicate that documentation was received at the Houston District Office on March 24, 2004. The applicant also submits copies of his response, specifically a statement from him and a letter from his mother regarding his absence in 1987. In his statement, the applicant asserted, "[t]he initial purpose of my trip was to stay out of United States one or two weeks, but due to the devastating situation that my mother and family were suffering, I had to spend more days outside." In her letter, the mother described the financial struggles she and her family endured while living in Mexico with her husband, whom she claimed was abusive and an alcoholic. The mother asserted, in part:

Unfortunately our situation began getting worse, in 1987 when my husband left his job he began spending every day drinking alcohol and beating us. That's why in October of 1987, I called my son [the applicant] and I asked him to come to Mexico and speak to his father to ask him to leave the house, which in reality the owner was [the applicant], and I saw my son [the applicant] as the most appropriate person to do so.

In October 15th of 1987 [the applicant] went to Mexico and took the matter into his hands making the necessary legal requirements to get my husband out of the house for family violence. But my husband tempted [sic] to come back to the house because he didn't have any other place to stay, causing major public disturbance outside our home screaming all intoxicated for us to let him in; that's why [the applicant] decided to stay in Mexico until January 5th of 1988 to make sure we were not harm[ed] in any possible way me or any of my children.

An absence of more than 45 days must be "due to emergent reasons" significant enough that the applicant's return "could not be accomplished." In other words, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant's return to the United States more than inconvenient, but virtually impossible. That was not the applicant's situation in this case. In her letter, the mother stated that the applicant went to Mexico for the express purpose of removing his father from the home. This absence was not due to any "emergent reason" - *i.e.*, one that was unforeseen at the time of

his departure. The applicant's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant's decision may have been to stay with his mother, the applicant's extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of his control that prevented his from returning far sooner.

Furthermore, except for the letter from his mother, the applicant does not provide any independent, corroborative, contemporaneous evidence to support the events that occurred while in Mexico.

The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously 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 by the regulations, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Finally, the record reflects that on May 8, 1989, the applicant was charged with violating title 8, U.S.C. section 1325(a)(3), willful misrepresentation of a material fact and title 18, U.S.C. section 911, falsely and willfully misrepresents to be a citizen of the United States. According to the Form I-703, Record of Action, on August 23, 1989, the case was terminated as the applicant was granted voluntary departure on August 17, 1989 and had departed. Case no [REDACTED]

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.