

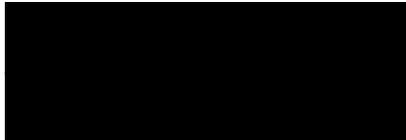
**PUBLIC COPY**

U.S. Department of Homeland Security  
Citizenship and Immigration Services

L2

Identifying information used to  
prevent identity-infringed  
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



FILE:

Office: BALTIMORE

Date: NOV 18 2003

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:

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Baltimore office. 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The district director denied the application because the applicant had not submitted sufficient evidence of residence, and because the applicant had been absent from the United States for over 45 days. The director therefore concluded that the applicant had not resided continuously in the United States and denied the application.

On appeal, counsel submits a brief in which he takes issue with the director's statement that the applicant had failed to present documentary evidence establishing physical presence in the U.S. prior to January 1, 1982. In his brief, counsel notes that the applicant had submitted not only affidavits attesting to his presence since 1981, but also postmarked envelopes addressed to him during the period in question. Counsel also argues that Citizenship and Immigration Services' 45-day rule, which specifies that 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, applies only to presence in the U.S. subsequent to November 6, 1986. As such, according to counsel, the 45-day rule has no bearing on the applicant's situation as his absence occurred prior to that date.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b). 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 eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his return to the U.S. could not be accomplished within the time period allowed. 8 C.F.R. § 245a.15(c)(1).

In denying the application, the director correctly noted that the applicant had indicated on his Form I-687 Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (INA) that he been absent from the United States for over a year from January 1984 to April 1985, thereby exceeding the 45-day limit allowed for absences from the U.S. during the period from January 1, 1982 to May 4, 1988.

In his brief, counsel states that the applicant's absence from the U.S. occurred from January 1984 to April 1985, and asserts that the 45-day rule applies only to presence in the U.S. subsequent to November 6, 1986. However, as previously noted, the regulations at 8 C.F.R. § 245a.15(c)(1) specify that 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 eighty (180) days between January 1, 1982, and May 4, 1988. [italics added].

Counsel indicates the applicant went to Pakistan for the purpose of marrying. There is no indication that an emergent reason delayed the applicant's return to the U.S.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b). As the applicant has failed to establish continuous residence in the U.S. from prior to January 1, 1982 to May 4, 1988, due to his very lengthy absence, he is ineligible for permanent residence under section 1104 of the LIFE Act. In light of the clear ineligibility, we need not address the evidence of residence.

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