



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]

Office: Houston

Date: OCT 25 2004

IN RE: Applicant: [Redacted]

PETITION: 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. 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

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prevent disclosure of
information that is
exempt from release

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Houston, 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 demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel asserts that the fact that he had departed the U.S. and was residing and attending school in Mexico during the period from January 1, 1982 through May 4, 1988 was beyond his control in that he was only a minor at this time.

An applicant for permanent resident status 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).

"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.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although CIS regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In his notice of intent to deny, the district director indicated that at the time of his adjustment interview at the Houston District Office on April 8, 2003, the applicant testified under oath in the presence of an examining Citizenship and Immigration Services (CIS) officer that he first entered the U.S. illegally at approximately the age of two accompanied by his parents and his sister [the record indicates the applicant was born December 28, 1980]. The applicant indicated that he lived with his family in Houston, Texas for a year or two, after which he was sent back to Mexico where he lived with his grandmother and attended first, second and third grade in Mexico. According to the applicant, in 1989, he obtained a B-2 visitor visa, with which he re-entered the U.S. in December 1989. This information, based on the applicant's own testimony at the time of his adjustment interview, indicates that he had been absent from the United States far in excess of the 45-day limit allowable for single absences from the U.S.

On appeal, the applicant asserts that he was a minor during the period in question and that he had no input into his family's decision that he depart the U.S. and return to his native Mexico to live with his grandmother and attend school. The fact remains, however, that the applicant concedes having resided in Mexico during most of the period in question. The applicant has not submitted any contemporaneous documentation or third-party affidavits or any other relevant documents to establish his presence in the U.S. from the time he claimed to have commenced residing in the U.S. through May 4, 1988. In the absence of additional evidence from the applicant, it is determined that his lengthy absence from the U.S. during the period from January 1, 1982 to May 4, 1988 exceeded the 45-day period allowable for a single absence.

While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the U.S. 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." At the time of his testimony at his adjustment interview, the applicant stated that, subsequent to his entry to the U.S. at the age of two, it was determined by his family that he be sent back to his native Mexico to live with his grandmother and attend grade school. While there may have been a valid basis for his family's decision, it also indicates that it was intended for the applicant to remain outside of the United States for an indefinite period. Moreover, the applicant has failed to provide any clear evidence of an intention on his part or on his parents' part for him to return to the U.S. within 45 days of his departure. Accordingly, in the absence of clear 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 his 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.

The applicant, on appeal, asserts he is also applying for adjustment to permanent resident status under the LIFE Act as a *derivative* applicant based on his father's having previously filed a claim for class membership. However, 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). Based on his own admission, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act and, as such, cannot derive status through his father.

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