

identifying data deleted to  
prevent clearly unwarranted  
invasion of privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



22

FILE:



Office: Houston

Date: APR 29 2005

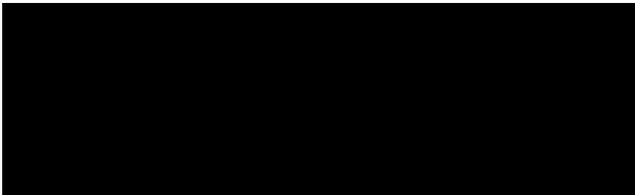
IN RE:

Applicant:



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:



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

**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 applicant's absences from the U.S. were due to emergent reasons and therefore not inconsistent with the applicant's claim to continuous residence in the U.S. during the period in question. In addition, counsel augments the record with additional evidence in support of the applicant's appeal.

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).

In his notice of intent to deny, the district director indicated that, during the period from January 1, 1982 through May 4, 1988, the applicant had two separate absences from the U.S., both of which exceeded the 45-day limit for single absences. Making reference to item 35 on the applicant's application Form I-687, in which an applicant is instructed to list any and all absences from the U.S. since the date of initial entry, the applicant listed following departures from the U.S.:

- January 22, 1982 to March 16, 1982 [for a total of 53 days]; and
- May 20 1985 to July 10, 1985 [for a total of 51 days].

In both cases, the reason provided by the applicant for his departures was to visit his family in Mexico. Clearly, the applicant's absences exceeded the 45-day period allowable for a single absence. However, 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."

On appeal, the applicant submits a personal statement in which he asserts that his 1982 visit to Mexico was prompted by his mother's having been hospitalized for treatment for breathing problems and pneumonia. In support of his assertion, the applicant provides a letter from [REDACTED] dated January 21, 1982. In his letter, [REDACTED] referenced the applicant's mother having been treated for pneumonia of the right lung which required her hospitalization and subsequent supervision by a family member to attend to her medications and postoperative care. The applicant further asserts that in 1985, it was necessary for him to return to Mexico as his mother's heart and vision problems had deteriorated and required him to make appropriate arrangements for her care during this period.

While the hospitalization of the applicant's mother in 1982 and the subsequent deterioration of her health in 1985 were undoubtedly valid bases for the applicant's respective departures from the U.S., it is also clear that, on both occasions, the applicant intended to remain outside of the United States for an indefinite period, i.e. to complete the purpose of his trip. Moreover, the applicant could have reasonably anticipated that, under the circumstances and given the condition of his mother's health, the absences in question were likely to have been extended departures. Nor has the applicant provided any clear evidence of an intention on his part -- on either occasion -- to return to the U.S. within 45 days of these departures. 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 in 1982 or 1985.

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.

It was also determined in the notice of intent that, at the time of his October 9, 2002 adjustment interview, the applicant failed to inform Citizenship and Immigration Services (CIS) that he had previously been removed from the U.S. to Mexico on March 16, 1982. However, as the applicant has already been determined to be ineligible for permanent residence under the LIFE Act, this matter need not be discussed further.

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