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U.S. Citizenship  
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L2



FILE:



Office: LOS ANGELES

Date: DEC 22 2005

IN RE:

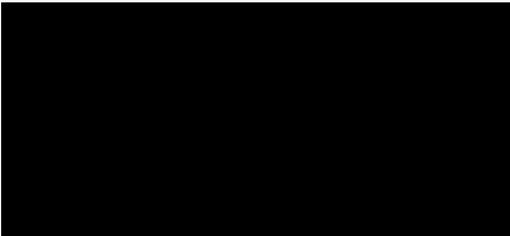
Applicant:



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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director determined that applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The director also determined that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the requisite period. Accordingly, the director denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel further asserts that the applicant's prolonged absence was due to emergent reasons. Counsel argues that the director failed to wait the full 30 days prior to denying the application.

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).

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 the 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided several affidavits from acquaintances attesting to his residence as well as an affidavit from employers attesting to his employment. The statement of the applicant, in response to the Notice of Intent to Deny regarding the amount and sufficiency of the evidence of residence has been considered. Furthermore, the applicant's contention that the inability to produce additional evidence of residence for the period in question was the result of the passage of time is considered to be a reasonable explanation in these circumstances.

It should be emphasized that affidavits in certain cases can effectively meet the preponderance of evidence standard. The director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

“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.

The director’s determination that the applicant had been absent from the United States for over 45 days was based on the applicant’s claim on his Form I-687 application. The applicant indicated that he departed the United States on June 14, 1987 to Spain to visit his family and did return until August 6, 1987.

On July 13, 2004, the applicant was advised in writing of the director's intent to deny the application. In her notice, the director indicated that due to the applicant's absence from the United States from June 14, 1987 to October 6, 1987, he had failed to establish continuous residence in the United States. The applicant, in response, asserted in part:

My father passed away in 1985, and my mother became very depressed, suffering emotionally with the loss of her husband, financially with the house payments, and physically with many health problems, including diabetes:

In or about May of 1987, my mother’s condition got so bad that she was advised by her doctor to get away from her problems for awhile, and she took her doctor’s advice and went to live with friends in Spain for the Summer of 1987.

When I heard how sick and depressed my mother’s condition had become, I personally decided to go to Spain, in order to be with my mother during her time of need. I left the United States via New York on June 14, 1987, and arrived in Spain on the morning of June 15, 1987.

My mother was very depressed and she looked very weak and sickly when I first saw her. I was determined to get her back in shape, and started her on a better diet, so that her depression and diabetes would not get the best of her. I also got her to do an exercise regiment, and promised her that I would stay until she was feeling better.

As a result, I ended up staying in Spain for longer than I had anticipated. However I believe that my extended stay in Spain should be considered an “emergent reason” for staying longer than the “45 days” rule.

The applicant presented a letter from [REDACTED] with the required English translation, who indicated that during May 1987, he treated the applicant’s mother who was diagnosed with severe depression. [REDACTED] indicated that he advised the mother to “take a vacation right away for her rapid recooperation [sic].”

While not dealt with in the director’s decision, there must, nevertheless, be a further determination as to whether the applicant’s prolonged absence from the United States. 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.”

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 his statement the applicant stated that he went to Spain for the express purpose of being with his mother. While this suggests that there may have been a valid basis for the applicant's departure from the United States, it also indicates the applicant intended to remain outside of the United States for as long as it took for his mother to recover. The applicant's continued stay in Spain 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 him from returning far sooner.

Furthermore, the letter from [REDACTED] does not attest to the events that occurred in Spain and, therefore, has no probative value in this matter. Except for the letter from [REDACTED] the applicant does not provide any independent, corroborative, contemporaneous evidence to support his statement of the events that occurred at the time of his mother's illness while in Spain.

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)).

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.

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