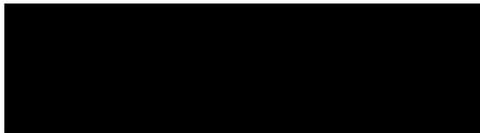


invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



JAN 27 2005

FILE:



Office: Denver

Date:

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. The file has 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, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director determined that the applicant had not submitted proof that his prolonged absences from the United States from December 1985 until March 18, 1986 and from April 15, 1988 until June 10, 1988 were due to emergent reasons. The director then determined the applicant had not established that he had continuously and unlawfully resided in the United States during the entire qualifying period from January 1, 1982 through May 4, 1988.

On appeal, the applicant states:

At this time I am submitting evidence from the doctor that did the surgery that states the time frame and reason why I was in Mexico. I also am submitting the contract that I signed that stated I was the responsible party and would pay for everything before my father had his surgery. Both of these documents are translated into English. This is all the information that I am able to obtain showing why I was in Mexico and the duration of time. I hope that this will assist you with my case.

The applicant submits a letter from Dr. [REDACTED] from the County University of Guadalajara that indicates that he attended to the care of the applicant's father on an emergency basis on January 28, 1985 for "grave angina pectoris." Dr. [REDACTED] further states that the applicant's presence was required to attend his father personally as well as economically. The applicant also submits a copy of a contract dated April 23, 1988 between himself and the Surgical Clinic of [REDACTED] agreeing to his father's treatment at that time and making the applicant responsible for any expenses that would accrue.

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, however, 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 unlawful residence” is defined in the regulations 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.

On appeal, the applicant has provided evidence concerning his absence from the United States from December 1985 until March 18, 1986. It is determined that the applicant has established that because of the health problems of his father and his role as a caregiver at that time, his return to the United States could not be accomplished within the time period allowed for emergent reasons. With regard to his second absence, from April 15, 1988 until June 10, 1988, as only 19 days of that visit abroad fell within the continuous residence period, it is determined that he did not exceed the 45 day limit on that trip.

The applicant has, therefore, overcome the objections of the director. However, beyond the decision of the director, there is another issue in this case. Under section 1104(c)(2)(E)(i) of the LIFE Act (“Basic Citizenship Skills”), an applicant for permanent resident status must demonstrate that he or she:

- (I) meets the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or
- (II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Under section 1104(c)(2)(E)(ii) of the LIFE Act, the Attorney General may waive all or part of the above requirements for aliens who are at least 65 years of age or developmentally disabled. The applicant is neither 65 years old nor developmentally disabled and thus does not qualify for either of those exceptions.

As further explained in the regulations, 8 C.F.R. § 245a.17(a) – Citizenship skills, an applicant can meet the requirements of section 312(a) by establishing that:

He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter [8 C.F.R. § 245a.17(a)(1)]; or

He or she has a high school diploma or general education development diploma (GED) from a school in the United States. . . . [8 C.F.R. § 245a.17(a)(2)]; or

He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview . . . [8 C.F.R. § 245a.17(a)(3)].

The regulations also give applicants the opportunity of a second interview. The regulation at 8 C.F.R. § 245a.17(b) provides that:

An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview shall be afforded a second opportunity after 6 months (or earlier, at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) and (a)(3) of this section. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

The record contains the note of the Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service or INS) officer that interviewed the applicant. That note states that the applicant passed the reading portion of a citizenship skills test but failed to pass the citizenship skills requirement. In this case, the applicant should be afforded a second opportunity to pass the United States history and government portions of the test.

It must now be determined whether the applicant is otherwise eligible for permanent resident status under section 1140 of the LIFE Act. Accordingly, the matter will be forwarded to the Denver District Office to continue the adjudication of the LIFE Act application.

**ORDER:** The appeal is sustained. The director shall complete the adjudication of the application for permanent residence.