

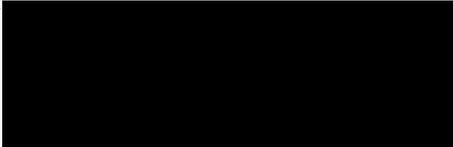
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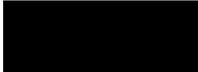
U.S. Citizenship
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FILE:



Office: Los Angeles

Date: JAN 09 2006

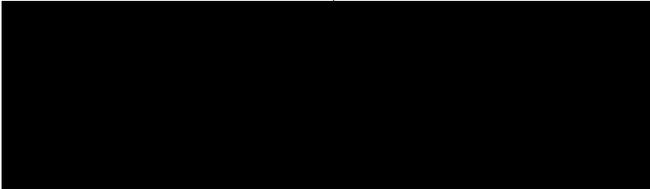
IN RE:

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

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's conclusion that the applicant admitted that he had been absent from this country from June 5, 1987 to July 30, 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel asserts the applicant's absence from the United States in 1987 was due to an emergent reason, specifically his mother's illness. Counsel asserts that the applicant should be considered a class member because of the recent settlements reached in *CSS v. Ridge*, Case Nos. Civ. S-98-629-LLK and S-86-1343-LKK IV and *Newman v CIS*, Civ. No. 87-4757-WDK (CWX).

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. See § 1104(c)(2)(B) of the LIFE Act and 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 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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about January 17, 1991. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant indicated that he had been absent from this country for fifty-four days when he traveled to Mexico because of his mother's illness from June 5, 1987 to July 30, 1987. The applicant included a "Form for Determination of Class Membership in *CSS v. Meese*" in which he indicated that he departed the United

States by airplane on June 5, 1987 and then returned to this country on July 30, 1987 and that the purpose of his trip was his mother's serious illness. The applicant also submitted a letter written in the Spanish language that is signed by Dr. [REDACTED] of the [REDACTED] Cardiology Hospital in Mexico City, Mexico and accompanied by a certified English translation. Dr. [REDACTED] stated that the applicant's mother was hospitalized on June 2, 1987, diagnosed with a heart attack, treated, and subsequently released from the hospital on July 25, 1987.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on January 2, 2002. The record further shows that the applicant appeared for an interview relating to his LIFE Act application at the Los Angeles, California District Office on June 16, 2004. The record contains a sworn statement that is signed by the applicant and written in his own hand in which he stated that he went back to Mexico because his mother had a heart attack.

Based upon the applicant's own testimony and sworn statement it must be concluded that his admitted absence from the United States of fifty-four days in the period from June 5, 1987 to July 30, 1987 constituted fifty four days, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absence of fifty-four days exceeded the forty-five day limit for a single absence.

In response to the notice of intent to deny and on appeal, counsel acknowledges the applicant's absence from this country from August 25, 1987 to November 25, 1987, but asserts that his return to the United States had been delayed by an emergent reason, specifically his mother's illness. 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 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."

Counsel contends that the illness of the applicant's mother was the emergent reason that caused applicant's absence to exceed the the forty-five (45) day limit for a single absence from the United States during the period in question, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). However, as noted above, the record contains a letter written in Spanish accompanied by a translation both of which the applicant included with his Form I-687 application. These documents reflect that the applicant's mother was hospitalized with a heart attack on June 2, 1987 and remained hospitalized until her release on July 25, 1987. The applicant provided testimony that he was absent from the United States for fifty-four days, from July 5, 1987 to July 30, 1987, when he traveled to Mexico to visit his ill mother, on the Form I-687 application, the determination form, and his own sworn statement. The direct and independent evidence in the record, as well as the applicant's own testimony establish that his mother became ill on June 2, 1987, prior to his admitted departure from the United States for Mexico on July 5, 1987. The applicant had knowledge of his mother's serious medical condition prior to his departure from this country and should have been aware that an extended period of recovery from such an illness was foreseeable. Without any direct and independent evidence to the contrary, it cannot be concluded that applicant's absence from the United States of fifty-four days from June 5, 1987 to July 30, 1987 was due to an "emergent reason" within the meaning of *Matter of C, supra*. 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)). Without documentary evidence to support the claim, the assertions of

counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I. & N. Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I. & N. Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980).

Counsel asserts that the applicant should be considered a class member because of the recent settlements reached in *CSS v. Ridge*, Case Nos. Civ. S-98-629-LLK and S-86-1343-LKK IV and *Newman v CIS*, Civ. No. 87-4757-WDK (CWX). However, the settlements referenced by counsel and the corresponding program for the submission of legalization applications for temporary resident status under these settlements is separate and distinct from the statutes, regulations, requirements, and procedures for applying for permanent resident status under the provisions of the LIFE Act. As it has already been established that the applicant is a class member, this will not be addressed.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has specifically admitted that he exceeded the forty-five day limit for a single absence from this country when he departed to Mexico on June 5, 1987, and did not return to the United States until July 30, 1987. The applicant has failed to submit sufficient evidence to establish that an emergent reason delayed his return to the United States. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.