

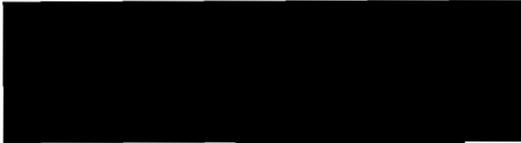


U.S. Citizenship  
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FILE:

MSC 02 264 61472

Office: NEW YORK Date:

DEC 02 2008

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. The file has been returned to the National Benefits Center. 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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity Act (LIFE) Act was denied by the Director, New York, 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 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 applicants admission that he had not been in the United States from 1985 through December 1989, 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 that the applicant misunderstood the certified statement he was signing at his interview, that he was only absent from the United States for three weeks, and is eligible for LIFE Act legalization.

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 on hundred and eighty days (180) 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, the proof submitted by the applicant has to establish only that the assertion or asserted claim is probably true. *See Matter of E--M-*, 20 I&N Dec. 77 (Comm. 1989).

*Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

On April 26, 2004, the director sent the applicant a Notice of Intent to Deny (NOID) stating he had been absent from the United States for more than 45 days at one time and was not eligible for LIFE Act legalization.

On August 31, 2005, the director denied the application because the applicant had broken his chain of continuous unlawful residence and had failed to establish her continuous unlawful presence during the required period.

In a signed statement dated April 14, 2004, the applicant admitted that he had been absent from this country for a period of over 4 years, from 1985 to 1989. The record indicates that the applicant's first entry was in December 1989, including an application for asylum in which the applicant states his first entry was in December of 1989. The record also contains a Form EOIR-40, Application for Suspension of Deportation, in which the applicant stated that his first entry into the United States on December 23, 1989.

On appeal counsel for the applicant asserts that the statement the applicant signed during his interview was a mistake, and that he was only absent for a period of three weeks. The record contains several affidavits signed by acquaintances of the applicant asserting that they took him on a three week vacation out of the United States. However, there is no primary evidence that the applicant entered the United States prior to January 1, 1982, and resided continuously in an unlawful status through May 4, 1988. In fact, the record indicates that the applicant first entered the United States in December 1989 when he applied for asylum. The submitted affidavits do not overcome the applicant's own prior admissions and records that his first entry was in December 1989.

Although the basis of the director's decision was the applicant's admitted absence of greater than 45 days, an examination of the record reveals that the applicant did not enter the United States until December 23, 1989, and is therefore statutorily ineligible for LIFE Act legalization.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for LIFE Act legalization has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 245a of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.