

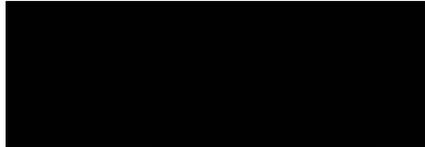
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FILE:

MSC 02 248 65066

Office: NEW YORK

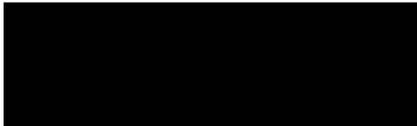
Date: NOV 04 2008

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.

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

Robert P. Wiemann, 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 district director's conclusion that the applicant admitted that he had been absent from this country for three months in 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 was not absent for three months and submits a date stamped envelope in support of his assertion.

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 March 3, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) requesting an explanation of his absence.

On July 26, 2006, 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.

The applicant admitted a three month absence during an interview with CIS, and on his I-687, Application as a Temporary Resident, he lists a three month break in his residence questionnaire. The envelope submitted by the applicant on appeal bears no U.S. postal markings, and therefore cannot be deemed authentic. In any event, a single date stamped envelope is not probative of an applicant's presence during a specific time, and in this case the address listed for the applicant is not consistent with the addresses and time periods he listed in his filings. The applicant has not established by a preponderance of evidence that he was not absent from the United States for a period of three months as he admitted during his interview.

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 absences of approximately 100 days exceeds the forty-five day limit for a single absence.

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 sustained. This matter is remanded for further action and consideration pursuant to the above.