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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



22

FILE: [REDACTED]

Office: Denver

Date: MAR 09 2005

IN RE: Applicant: [REDACTED]

PETITION: 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. 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.

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 Interim District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant asserts that his departure from the U.S. for Mexico was due to a family emergency involving his father's health. In addition, the applicant attempts to rectify what he deems to have been a misunderstanding on the part of the district office arising from his testimony at his adjustment interview.

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).

"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).

According to the decision, at the applicant's April 22, 2003 adjustment interview, taken under oath in the presence of an examining district Citizenship and Immigration Services (CIS) officer, he stated that he departed the U.S. for Guanajuato, Mexico in 1986 upon hearing that his father was ill, and remained in Mexico for a year. Subsequently, in response to the notice of intent to deny, the applicant submitted a personal statement dated May 28, 2003, in which he asserted that he left the U.S. on February 28, 1986 upon hearing that his father was ill and would require surgery. The applicant also provided a statement from his mother, [REDACTED] who asserted that the requirements of her job in the U.S. prevented her from leaving the U.S. in 1986 to be present at her husband's surgery, and that, as a result, her son [the applicant] was obliged to leave for Mexico, where he remained until late December 1986.

In addition, the applicant submits the following additional evidence related to his absence from the U.S.:

- A letter from Dr. [REDACTED] who stated that on February 28, 1986, he operated on the applicant's father for chronic appendicitis, and that, on March 15, 1986, he again operated on the applicant's father, this time for gall bladder problems. Dr. [REDACTED] also indicated that the

applicant returned to Mexico from the U.S. in order to care for his father during the latter's recovery from the surgery;

- A letter from Dr. [REDACTED] who stated that on February 28, 1986, an emergency operation was performed on the applicant's father, and that, as a result, it was necessary for a family member – in this case, the applicant – to be present in order to handle such matters as providing authorization for medical procedures, as well as being present to help provide care for the patient after the surgery had been performed. In addition, Dr. [REDACTED] indicated that during the father's recuperation from the surgery, which lasted until November 1986, the applicant was required to remain with him and monitor his progress;
- A statement from [REDACTED] the applicant's father, who states that, on February 28, 1986, an operation was performed on him. As there was no one else to provide care, the applicant was required to leave his residence in Livingston, Texas to look after his father, which he did until December 1986, when the applicant returned to the U.S.; and
- A joint communication from [REDACTED] and [REDACTED], both of whom appear to be municipal officials from the applicant's home town in Mexico. In their joint communication, the officials attest to the applicant having been forced to return to Mexico from the U.S. due to an emergency situation necessitated by his father's operation on February 28, 1986 and the resulting need for the applicant to be present to care for his father following the surgery and to perform work that his father was unable to accomplish during his recovery.

It is clear based on the applicant's testimony at his adjustment interview along with the aforementioned third-party statements submitted on his behalf that the applicant's absence from the U.S. from February 28, 1986 to December 1986 far exceeded the 45-day period allowable for a single absence. 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 U.S. 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."

In his personal statement of May 28, 2003, the applicant asserted that he had originally planned on returning the week of March 1, 1986 but that his father's worsening condition necessitated his remaining in Mexico longer than he had anticipated. However, this statement regarding the applicant's supposed intention to return to the U.S. a week after visiting his father in Mexico is not supported by the aforementioned statements, which clearly indicate that due to his mother's inability to leave her job in the U.S., the applicant was required to travel to his father's bedside in Mexico and care for him for as long as necessary. While there was undoubtedly a valid basis for the applicant's departure from the United States (a family emergency necessitated by his father having to undergo emergency surgery), it also suggests the applicant intended to remain outside of the U.S. for as long as it took to complete the purpose of his trip, *i.e.* for an indefinite period or, at least, for the duration of his father's surgery, treatment and recovery. The applicant has, therefore, failed to provide any clear or credible evidence of an intention to return to the U.S. within 45 days. Accordingly, in the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented the applicant's return to the United States beyond the 45-day period.

It should also be noted that, on December 22, 1993, on the occasion of the applicant's interview at the time he originally applied for class membership on his I-687 application, he specified to the interviewing officer that his trip to Mexico did not commence until July 1987 and that he was absent from the U.S. for a maximum of

several months. On his Form for Determination of Class Membership in *CSS v. Meese*, the applicant also indicated that his departure from the U.S. to Mexico did not begin until July 1987 and that he returned to the U.S. in August 1987. This information is clearly contradictory to, and at variance with, that subsequently provided by the applicant in conjunction with his LIFE application and communicated at the time of his adjustment interview, thereby serving to diminish the credibility of his claim. Moreover, as noted in the district director's decision, the applicant's credibility is further eroded by having submitted employment letters indicating his employment from 1981 through 1987, with no mention of his having to return Mexico for nearly a year.

The applicant has, therefore, failed to credibly 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.