

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

1-2

[REDACTED]

FILE: [REDACTED]
MSC-02-233-61746

Office: SACRAMENTO

Date: NOV 03 2008

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 your case 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, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Field Office Director, Sacramento, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found the evidence submitted with the application was insufficient to establish eligibility 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. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). Specifically, the director noted that the applicant had not submitted sufficient evidence of his continuous residency for the requisite period and that he had provided affidavits that lacked probative value. The director denied the case, noting that the applicant's testimony and all supporting affidavits were insufficient to establish eligibility for the benefit sought.

On appeal, through counsel, the applicant indicates that "the District Director claimed that the affidavits presented were of no probative value despite memos which instruct in a process to verify the statements in the affidavits rather than merely disregarding them." The applicant failed to address the director's concerns regarding the paucity and credibility of the evidence submitted in support of the applicant's continuous residency for the statutory period. Furthermore, none of the affidavits provided contact information that would facilitate the director to contact the affiants and the applicant did not submit any additional evidence of his continuous residency.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Following *de novo* review, the AAO notes that the record of proceedings contains a copy of the applicant's passport. Entry and exit stamps in the applicant's passport confirm that the applicant entered Algeciras, Spain on September 23, 1987 and did not reenter the United States until November 21, 1987, a departure of at least 59 days.

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.

The applicant's admitted absence from the United States from September until November 1987, a period of more than 45 days, is clearly a break in any period of continuous residence he may have established. As he has not provided any evidence or even asserted that it was his mother's unexpected and sudden poor health that was the "emergent reason" for his failure to return to the United States in a timely manner, he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, as required under 8 C.F.R. § 245a.15(c)(1).

Since the applicant has failed to meet the burden of proof by a preponderance of the evidence that he resided continuously in the United States for the requisite period, the appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.