

Interim Decision #1410

MATTER OF AZMITIA

In SECTION 245 Proceedings

A-13409088

A-13985570-1

Decided by Acting Regional Commissioner October 15, 1964

Adjustment of status under section 245, Immigration and Nationality Act, as amended, is denied, in the exercise of discretion, to an alien who, with a pre-conceived intention to establish permanent residence in this country, sought and gained entry into the United States as a nonimmigrant visitor, since the bona fides of the alien in securing his nonimmigrant visa is a persuasive factor in considering the exercise of such discretion.

DISCUSSION: The applications have been denied by the District Director, New Orleans, Louisiana, who has certified his decisions in these cases to this office for review. The applicants, natives and citizens of Guatemala, are a man, his wife and their unmarried, minor child. Being a family group, the cases will be considered together.

The applications were denied in the exercise of the Attorney General's discretion because at the time the applicants obtained their nonimmigrant visas from the American Consul in Guatemala City, Guatemala, and at the time of their admission into the United States on March 5, 1964 as nonimmigrant visitors for pleasure, they intended to apply for permanent residence in this country and to make their home here.

When interviewed by an officer of this Service on April 1, 1964 concerning their applications for permanent residence in the United States, the adult applicants stated under oath that, although they told the American Consul when applying for their nonimmigrant visas that they were coming to the United States on a visit, it was their actual intention to come here for permanent residence. They explained in the interview that they had done this on the advice of a relative in this country and because it takes too long to obtain immigrant visas in Guatemala. In his brief in answer to the notice of denial, the principal applicant states that at the time he and his family applied to the American Consul for their nonimmigrant visas "there was no fixed

Interim Decision #1410

intention on my part to stay away from Guatemala City, but there was hope that when I got to the United States I might find circumstances to permit me to become a permanent resident in the United States."

The applicants' statements to the Service officer when interviewed are so completely frank and in detail with respect to their true intention in coming to this country that, notwithstanding the brief, it is clear they planned to remain here permanently and that their applications for permanent residence were filed in furtherance of such plan which was conceived prior to their arrival in the United States, and, indeed, prior to their applications for their nonimmigrant visas.

While there is no statutory bar to the approval of these applications, the bona fides of the applicants in obtaining their nonimmigrant visas and in gaining admission into the United States are persuasive factors in considering the exercise of the Attorney General's discretion. The method used by the applicants to seek permanent residence in this country indicates their wilful disregard for visa-issuing procedures which cannot be ignored or condoned. The applications do not, therefore, warrant the favorable exercise of discretion, and they were properly denied. Accordingly, the District Director's decisions will be approved.

ORDER: The decisions of the District Director denying the applications are approved.