

Opinion No. 62-133

October 24, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S Thayer, Assistant Attorney General

TO: Mr. R. F. Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

QUESTION

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Is a citizen of Cuba who resides in New Mexico eligible to be licensed as a life insurance agent?

CONCLUSION

Yes.

OPINION

ANALYSIS

We understand from your request that Mr. Geraldo Lopez, a citizen of Cuba, but a refugee from that country, has taken up residence in New Mexico. He formerly conducted an extensive life insurance business in Cuba. A qualified insurance company desires to employ him as a life insurance agent, if he can be licensed.

The requirements for licensing life insurance agents are stated in Section 58-5-22.5 and 58-5-22.6, N.M.S.A., 1953 Compilation, relating to applications and examinations. One of the requirements is bona fide residence in New Mexico.

No particular period of residence is required, nor is there any requirement of citizenship.

In an analogous situation under the contractors' licensing law, we held in Opinion No. 60-162, September 20, 1960, that an otherwise qualified alien could be issued a contractor's license.

Of course, Mr. Lopez must meet the requirements of Section 58-5-22.5 as to bona fide residence, experience, business reputation, worthiness, intention to engage in business, and filing fee, and must pass the examination prescribed by Section 58-5-22.6. The Superintendent of Insurance must determine whether these requirements are met, and we are not called on to pass upon them.

On the question of bona fide residence, you are advised that residence is largely a question of intent. If a person is physically present within this state, and intends in good faith to remain here, or has no present intention to leave, he is a bona fide resident. No particular period of time is required so long as physical presence and the requisite intention coincide. It appears under Section 58-5-22.5 (b) (1), that, if an official or representative of the life insurance company that desires to employ the applicant certifies that the applicant is a bona fide resident of New Mexico, then the Superintendent of Insurance need not look further into the question of residence, unless he feels that the certificate is untruthful or is not filed in good faith.

Our opinion is that a citizen of Cuba who resides in New Mexico, and who is otherwise qualified, is eligible to be licensed as a life insurance agent.