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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: Phoenix Date: DEC 03 2004

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 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.

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

The director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. In particular, the decision cited the definition of "resided continuously in the United States," set forth in 8 C.F.R. § 245a.1(c)(1), as precluding any single absence exceeding 45 days and total absences exceeding 180 days, unless the applicant can establish that "emergent reasons" prevented a timely return. The director found that at least one of the applicant's stated absences had exceed the 45 day single absence limit and that the total of the applicant's absences exceeded the 180 days aggregate limit, also breaking the continuity of his unlawful residence in the United States.

On appeal counsel states that at his May 5, 2003 interview the applicant got nervous when asked about his absences in relation to his children being born in Mexico and answered that he traveled to that country every year for one or two months during the Christmas holidays. Counsel indicates that the applicant was under duress at his interview and that an amendment concerning his absences filed by the applicant at his interview does not contain correct information. Counsel forwards an affidavit from the applicant's spouse indicating that her husband visited her and his family in Mexico during the month of June and a week in July in 1985 and that was when she became pregnant with their daughter who was born on March 1, 1986. Counsel indicates that the applicant believes that his absences during the Christmas holidays never exceeded 45 days and asserts that "the only the [sic] exit that he had on August 1988 to February 1989, for less than 180 days was after the cut-off date of May 4, 1988." Counsel argues that the applicant's exits from the United States were brief, casual and innocent absences and did not breach the continuous physical presence requirement required by the policies reflected in the immigration laws, case law and procedures.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("*CSS*"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("*LULAC*"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("*Zambrano*"). *See* section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." *See* 8 C.F.R. § 245a.14.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. The pertinent statutory provisions read as follows:

Section 1104(c)(2)(B)(i). In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

"Continuous unlawful residence" is defined in the regulations 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.

In his decision the director drew upon information provided by the applicant in an interview conducted by an officer at the Phoenix District Office in March 2003. At that interview the applicant, a native of Mexico, stated that he had been absent from the United States on a number of occasions during the qualifying period. The director noted that the applicant stated that in December of each year from 1982 through 1987 that he left this country for family Christmas visits, staying for one or two months each time. The director also relied upon a document provided by the applicant in support of his LIFE application. In that document, he provided the following information concerning his absences from the United States from December 1982 through February 1989:

Date Departed U.S.	Date Returned to U.S.	Purpose of Absence
12-82	01-83	Visit Family
12-83	02-83	" "
12-84	02-85	" "
12-85	02-86	" "
12-86	02-87	" "
12-87	02-88	" "
08-88	02-89	Visit, but had accident and stay [sic] longer

This record of the applicant's absences is now supplemented by the affidavit from the applicant's spouse that was forwarded on appeal indicating that her husband visited her and his family in Mexico during the month of June and a week in July in 1985 and that was when she became pregnant with their daughter who was born on March 1, 1986.

As the director noted, any one of the stated absences that exceed the 45-day single absence limit would break the continuity of the applicant's unlawful residence. The director found that the total of the applicant's absences exceeded the 180 days aggregate limit that also break the continuity of the applicant's unlawful residence in the United States. Even if the first six trips outside of the United States were considered to total 30 days each trip, he would have been outside the United States for about 180 days. Even if all of his trips outside this country were

less than 45 days in duration, he spent many more than 180 days abroad during the qualifying period given his testimony and the additional trip disclosed for the record on appeal.

The applicant has, therefore, failed to 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.