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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Houston Date: [illegible] 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: Self-represented

identifying data deleted to prevent clearly unwarranted [illegible] vacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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

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

In his Notice of Intent to Deny (NOID) dated April 8, 2003, the director noted that the applicant's wife first came to the United States in March 1982, returned to Mexico in March 1986 and returned to the United States in 1991 with their daughter who was born on August 28, 1988 in Mexico. The director outlined the applicant's claim that since he first entered the United States, he had only one absence from this country from August 10, 1987 to September 20, 1987. The director found the applicant's claim of his absences from this country to lack credibility because both he and his wife would have been in separate countries around November or December in 1987 when their daughter would have been conceived. The director also found that 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 because of his forty-two day trip in 1987 that was over thirty days in duration. This decision was based on the director's determination that the applicant had exceeded the thirty-day limit for single absences from the United States during this period.

In response to the NOID, the applicant stated, in part, that:

> I am aware that on March 27, 2003, I appeared for my interview and informed the service under the United States I only had one absence before 1990 September 30, 1987 these dates were incorrect. The purpose for this letter is to apologize and to provide you with the correct dates and information. My absence was from August 10, 1988. And the purpose was to visit my family and wife when my daughter Martha Vega was born.

On appeal, the applicant states:

> I am filing this appeal because I was denied my application to permanent residency. I do not know why when I submit all the information they ask for I don't have any more proof or documents if I get more information than I be laying and I don't want to layed on something the it is very important to me. Thank you very much I hope you'll understand.

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* 8 C.F.R. § 245a.11(b). An applicant must also establish continuous physical presence from November 6, 1986 through May 4, 1988. *See* 8 C.F.R. § 245a.16.

In the NOID, the director included the following quote from the regulations at 8 C.F.R. § 245a.16(b):

> ...a single absence from the United States between November 6, 1986 and May 4, 1988 of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days shall interrupt the continuous physical presence requirement, unless the alien had advance parole and can establish that the absence was due to emergent reasons.

This regulation, however, had been amended and the previous reference to a "thirty (30) day limit" on absences was removed. The current, amended regulation reads as follows:

> For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

The regulation at 8 C.F.R. § 245a.15(c)(1) defines "c*ontinuous unlawful residence*" 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.

Based upon the amended regulation which remains currently in effect, it is determined that the applicant's forty-two day visit to Mexico between August 10, 1987 to September 20, 1987 would not be disqualifying because it was for less than 45 days.

In his response to the director's NOID, the applicant brings up a second visit abroad that began in August 10, 1988 that was for the purpose of visiting his family and wife when his daughter was born in Mexico. However, the applicant did not address the problem raised by the director in his decision, his claim that he and his wife were living in separate countries during the period of time when his daughter was conceived.

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 applicant in this case has not addressed the director's concern that in November or December in 1987 when their daughter would have been conceived, the applicant claimed that they were both living in separate countries. 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.