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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: Los Angeles

Date: APR 01 2005

IN RE: Applicant: [REDACTED]

PETITION: 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

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, Los Angeles, California, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. This decision was based on the district director's conclusion that the applicant's absence from this country from February 1986 to June 1987 had exceeded the forty-five (45) day limit for a single absence from the United States during the period between November 6, 1986 and May 4, 1988, as set forth in 8 C.F.R. § 245a.16(c)(1).

On appeal, the applicant asked for a copy of the record of proceedings in order to review any prior signed statements relating to his departures from the United States that he had provided to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS).

The record shows that CIS subsequently mailed a copy of the record of proceedings to the applicant on December 28, 2004, and provided him with thirty days to submit material to supplement his appeal. However, as of the date of this decision, the applicant has failed to submit a statement, brief, or evidence to support his appeal. Therefore, the record shall be considered complete.

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. 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.

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 inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record shows that the applicant appeared at the Service's Los Angeles Legalization Office on September 4, 1991, in order to be interviewed regarding his claim to class membership in one of the requisite legalization class-action lawsuits. During this interview, the applicant provided a signed sworn statement executed in his own hand in his native language of Spanish that reads as follows, "[redacted] en Febrero de 1986 y regrese en Junio de 1987." The English translation of the applicant's signed sworn statement is "I, [redacted] went out in February 1986 and returned in June 1987." The applicant's sworn statement established that he had been

absent from the United States for approximately sixteen months from February 1986 to June 1987 and, therefore, he had exceeded the 45 day limit for a single absence as provided in 8 C.F.R. § 245a.15(c)(1).

The applicant was subsequently determined to be a class member in a legalization class-action lawsuit and as such, was permitted to file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA on or about August 3, 1995. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant listed a single absence from this country when he traveled to Mexico from February 1986 to June 1987 because he had been "laid off." With his Form I-687 application, the applicant provided a "Form for Determination of Class Member in *CSS v. Meese*." At question #6 of the determination form where applicants were asked to list the date of their first entry into the United States, the applicant listed 1980. In addition, at question #9 of the determination form where applicant were asked to provide details regarding each absence from this country during the requisite period, the applicant indicated that he had been absent from the United States from an unspecified date in 1986 to travel to Mexico because he was "out of work" and that he did not return to the United States until March 1987. The record shows that the applicant provided another signed sworn statement dated August 3, 1995, in which he declared that he was here in the United States in 1982 with an absence from this country in the same year. The applicant also provided his explanation as to why he had not applied for legalization during the original application period from May 5, 1987 to May 4, 1988.

The record shows that the applicant filed his Form I-485 LIFE Act application on March 15, 2002. The record further shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Los Angeles District Office on April 29, 2003. During the course of this interview, the applicant provided another two separate signed sworn statements. In the first of these statements, the applicant declared that he first entered the United States on December 31, 1981 about one hour before midnight. In the other sworn statement, the applicant indicated that he had been absent from this country for two weeks in February 1986. However, the applicant failed to provide an explanation as to why he had previously specified that he had been absent from the United States when he traveled to Mexico in February 1986 and did not return to this country until June 1987 in both the Form I-687 application and the sworn statement he provided on September 4, 1991.

In response to the notice of intent to deny issued on September 24, 2003, the applicant submitted a statement in which he claimed that dates listed on the Form I-687 application relating to his absence from this country in February of 1986 were not correct. The applicant attributed the error in dates for his absence on the Form I-687 application to nervousness, his inability to read and understand English, and the fact that the application had been prepared by another individual. The applicant indicated that he departed the United States in February 1986 to be married in Mexico, and that he returned to this country during that same month approximately two weeks later. However, the applicant's explanation cannot be considered as sufficient to overcome the fact that he provided a signed sworn statement executed in his own hand in his native language of Spanish that reads as follows, "Yo [redacted] sali en Febrero de 1986 y regrese en Junio de 1987." As noted above, the English translation of the applicant's signed sworn statement is "[redacted] went out in February 1986 and returned in June 1987." In addition, on both the Form I-687 application and the determination form, the applicant specified that he had been "laid off" and "out of work" respectively, as the reason for his return to Mexico on the occasion of this absence. The applicant failed to provide any explanation as to why he had previously claimed that the reason for his absence was a lack of work, rather than claiming that the purpose of his trip was to be married.

The district director determined that the applicant had failed to rebut the information contained in the notice and denied the application.

On appeal, the applicant seemingly questioned whether he had previously provided any signed sworn statements in which he admitted that he had been absent from the United States from February 1986 to June

1987. However, as has been discussed above, the applicant provided a sworn statement written in his own hand in his native language of Spanish in which he declared that he was absent from this country from February 1986 to June 1987 when he was interviewed on September 4, 1991. Although the applicant claimed that the dates of his absence were listed in error on the Form I-687 application by the preparer, it is considered significant that the Form I-687 application lists the same exact dates for the absence, February 1986 to June 1987, that the applicant had specified in his previous sworn statement. Therefore, it cannot be concluded that the applicant has advanced any compelling reason as to why his prior testimony relating to the dates of his absence from the United States should be disregarded.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The applicant has specifically admitted that he exceeded the 45 day limit for a single absence from this country when he departed to Mexico in February 1986, and did not return to the United States until June 1987. The applicant has admitted that the reason for this trip was the fact that he had been laid off and was out of work. Therefore, it cannot be concluded that an emergent reason delayed his return to the United States. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, 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.