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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Los Angeles

Date: FEB 23 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:

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 December 1987 to February 1988 had exceeded the thirty (30) 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(b).

On appeal, counsel asserts that the applicant is able to adjust to permanent resident status under the provisions of the LIFE Act regardless of the length of his stay outside of this country during the period from January 1, 1982 to May 4, 1988. Counsel contends that this position is supported by a recent court decision and subsequent regulations promulgated by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services or CIS).

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).

In the notice of intent to deny, the district director quoted from 8 C.F.R. § 245a.16(b), which reads in pertinent part as follows:

...A single absence from the United States of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days absence unless the alien had advance parole or 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(s) allowed.

This regulation, however, has since been amended and the previous reference to a "thirty (30) day limit" on absences has been 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.

As cited above, the pertinent regulation is contained in 8 C.F.R. § 245a.15(c)(1), and provides a forty-five (45) day limit for a single absence from the United States, 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.

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA on or about April 10, 1991. 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 India to visit his family from December 1987 to February 1988.

The record shows that the applicant filed his Form I-485 LIFE Act application on March 25, 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 October 1, 2003. During the course of this interview, the applicant provided a signed sworn statement in which he declared "12-1987 I go to India 2-1988 I come back United States I see my family [sic]."

The applicant's sworn statement established that he had been absent from the United States for approximately two months and, therefore, he had exceeded the 45 day limit for a single absence as provided in 8 C.F.R. § 245a.15(c)(1).

As previously noted, on appeal, counsel asserts that the applicant had only one absence from the United States in the requisite period. Counsel declares that the applicant is able to adjust to permanent resident status under the provisions of the LIFE Act regardless of the length of his stay outside of this country during the period from January 1, 1982 to May 4, 1988. Counsel contends that this position is supported by a recent court decision and subsequent regulations promulgated by the Service. However, counsel has failed to cite any specific court decision, statute, or regulation to support his contention. As discussed previously, the pertinent regulation is contained in 8 C.F.R. § 245a.15(c)(1), and provides a forty-five (45) day limit for a single absence from the United States, 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. Neither the applicant nor counsel has asserted that an emergent reason delayed his return to the United States when he traveled to India to visit his family from December 1987 to February 1988.

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).