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U.S. Citizenship
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Services

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JUN 1 2004

FILE: [Redacted]

Office: Los Angeles

Date:

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

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 1981 to either 1985 or 1986 had exceeded the forty-five (45) day limit for a single absence from the United States during this period set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant asserts that he has submitted sufficient evidence to establish continuous residence in the United States for the requisite period.

An applicant for permanent resident status under the LIFE Act 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 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 Immigration and Nationality Act (INA) on July 16, 1990. 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 for a medical emergency from May 5, 1987 to May 20, 1987. In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted ten affidavits of residence and an employment letter.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on August 9, 2001. On the Form G-325A, Record of Biographic Information, which accompanied his LIFE Act application, the applicant indicated that he married his wife in Mexico on December 29, 1984. The fact that the applicant acknowledged that he was absent from the country when he was married in Mexico on

December 29, 1984, directly contradicted his prior claim that his single absence from this country occurred when he visited Mexico in May 1987.

The record further shows that the applicant subsequently appeared for the requisite interview relating to his LIFE Act application at the Los Angeles, California District Office on May 3, 2004. The notes of the interviewing officer reflect that the applicant testified under oath that he been absent from the United States when he traveled to Mexico in 1981, until his return to this country on a date that he could not recall in either 1985 or 1986.

On May 3, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his application because of the testimony and written statement he had provided at his interview regarding his four to five year absence from the United states from 1981 to an unspecified date either 1985 or 1986. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he asserted that he had not been absent from this country in the period from 1981 to 1986. The applicant indicated that he never admitted to being absent from the United States in this period and that the interviewing officer erroneously made this determination as a result of miscommunication. However, the applicant's statement failed to account for the fact that he admitted he had been absent from this country when he was married in Mexico on December 29, 1984 on the Form G-325A that was included with his Form I-485 LIFE Act application

The district director concluded that the applicant's testimony under oath provided at his interview established that he had been absent from the United States from 1981 to either 1985 or 1986 and, therefore, he exceeded the 45 day limit for a single absence as provided in 8 C.F.R. § 245a.15(c)(1). Consequently, the district director denied the LIFE Act application on October 29, 2003.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his continuous residence in the United States for the requisite period. However, the applicant failed to address the fact that he testified under oath that he had been absent from this country from 1981 to an unspecified date either 1985 or 1986. The applicant fails to provide any compelling reason as to why his prior testimony relating to his absence of some four to five years during the requisite period 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 to traveled to Mexico from 1981 to a date he could not recall in 1985 or 1986. 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.