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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: **MAR 28 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

The district director denied the application because 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. The application was also denied due to the district director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the period from prior to January 1, 1982 to May 4, 1988.

On appeal, the applicant submits a separate statement in which he asserts that the district director's decision denying his application is in error. The applicant reaffirms his claim to have resided continuously in the U.S. since his initial unlawful entry in 1981, and states that any absences or departures from the U.S. do not exceed the 45-day limit for individual absences.

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).

In his notice of intent to deny, the district director raised questions regarding the extent of the applicant's actual number and duration of the applicant's absences from the U.S. during the period in question. At his adjustment interview, the applicant testified under oath that he first entered the U.S. in June 1981 and, with the exception of a brief family visit to Mexico in 1987 of less than one month in duration, has resided continuously in the U.S. through May 4, 1988. This conforms to the information included on the applicant's previously-completed I-687 application, in which he indicated that his only absence from the U.S. occurred from December 6, 1987 to January 5, 1988, when he went to visit his mother, who had been ill. However, according to the notice of intent, this information is directly contradicted by other data in the record. According to the applicant's LIFE Application Form I-485, his daughter, [REDACTED] was born January 19, 1983 and his son, Ely, was born January 27, 1985. Both children, according to the I-485, were born in Mexico. Also included in the record is a statement from [REDACTED] Executive Director of [REDACTED] which confirms the birth dates of the applicant's children. The notice of intent also indicates the applicant testified at his interview that his wife did not enter U.S. until 1988.

On appeal, the applicant acknowledges having departed the U.S. for Mexico in 1983 and, again, in 1985 in order to be present for the birth of his children. The applicant's acknowledgement, on appeal, of these departures directly contradicts his previous claim, as indicated on his I-687 application and as reaffirmed in his relatively recent interview statement of April 12, 2004, that except for his brief trip to Mexico from December 1987 to January 1988, he continuously resided in the U.S. from prior to January 1, 1982 through May 4, 1988. While acknowledging having departed the U.S. in 1983 and in 1985, the applicant asserts, on appeal, that each of these departures were less than 45 days in duration and that the total number of days the applicant was absent from the U.S. was less than 180 days. However, the applicant has presented no additional, independent, corroborative evidence to support this assertion.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner 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 not provided any additional, credible evidence to resolve the inconsistencies referenced by the district director concerning his 1983 and 1985 departures from the U.S. In the absence of such evidence, it is determined that the applicant's lengthy absences from the U.S. during the period from January 1, 1982 to May 4, 1988 exceeded the 45-day period allowable for a single absence. There must, nevertheless, be a further determination as to whether the applicant's prolonged absence from the U.S. was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant acknowledges having departed the U.S. for Mexico in 1983 and in 1985 in order to be present at the birth of his children. The applicant has not provided any indication that, on either of these two occasions, an emergent reason "which came suddenly into being" delayed or prevented his return to the U.S. beyond the 45-day period.

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.