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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: DALLAS

Date:

AUG 14 2006

MSC 02 239 64868

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:

[REDACTED]

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Acting District Director, Dallas, Texas, 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 from before January 1, 1982 through May 4, 1988. The director also denied the application because the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the requisite period.

On appeal, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. Counsel provides copies of additional documents along with previously submitted documents in support of the appeal.

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).

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).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish unlawful residence since before January 1, 1982 through May 4, 1988, the applicant furnished employment letters from each of his employers as well as affidavits from affiants attesting to the applicant's residence and presence in the United States. The record contains no evidence to suggest that the director attempted to contact any of the former employers to verify the authenticity of the employment documents submitted. The statements of counsel on appeal regarding the amount and sufficiency of the

applicant's evidence of residence have been considered. In this instance, the applicant submitted evidence, which tends to corroborate his claim of residence in the United States during the requisite period. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Therefore, at issue in these proceedings is whether the applicant's absence from the United States in 1983 to 1984 was due to emergent reasons.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

Continuous residence. An alien shall be regarded as having resided continuously in the United States if:

- (1) 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. [Emphasis added.]

The director's determination that the applicant had been absent from the United States for over 45 days was based on the applicant's sworn signed statement taken at the time of his interview on April 4, 2003, under oath and in the presence of an officer of Citizenship and Immigration Services. In his sworn statement, the applicant asserted that he departed the United States for Mexico on December 28 or 29, 1983 and returned on March 3, 1984. The applicant indicated the purpose of his trip was to get married, which occurred on February 18, 1984.

It is noted for the record that on his Form I-687 application dated August 6, 1990, the applicant failed to disclose his marriage and 1983 absence.

The director, in her Notice of Intent to Deny dated December 16, 2003, advised the applicant that this absence from the United States had exceeded the 45-day limit for a single absence and, therefore, he had failed to establish *continuous* residence in the United States.

The director, in denying the application, noted that the applicant had not "provided no new evidence." The record, however, contains documentation submitted by counsel, which was received by the Dallas District Office on February 3, 2004; 16 days prior to the issuance of the Notice of Decision. As such, the documentation submitted will be considered on appeal.

In response to the Notice of Intent to Deny, counsel asserted in part:

...according to the custom of his [the applicant] village, he was required to court his wife during this time, and receive the permission of her family prior to being able to marry. As a result, although the marriage license is dated 01/19/2004, due to the fact that he was required to adhere to the courtship customs, he was unable to marry as quickly as he had hoped, with the actual

marriage ceremony taking place on 02/18/2004, with his departure being extended due to these emergent reasons. Shortly following his marriage and brief honeymoon, [the applicant] returned to the United States to his unrelinquished domicile.

On appeal, counsel asserts that the scenario explained below should qualify as an emergent reason for purposes of establishing continuous residence. Counsel states that the applicant continued to maintain a residence in the United States during this period and that he planned on returning after a brief, casual and innocent trip abroad. Counsel asserts in part:

[the applicant] was unable to return to the United States as expected in late January 1984 (well within 45 days), because the Catholic Church would not marry him without the completion of a number of classes.

[the applicant] was married in Mexico on January 19, 1984, approximately 21 days after his departure from the United States. Although [the applicant] had planned on returning to the United States one week after the marriage took place (making the departure 31 days in total), he was unable to do so when his father-in-law insisted that he marry his future wife in the Catholic Church. As a result, he was required to stay abroad for an additional month to complete marriage preparation classes with a Catholic priest, prior to being united in marriage by the Church.

While not dealt with in the district director's decision, there must, nevertheless, be a determination as to whether the applicant's prolonged absence from the United States 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."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. While the AAO takes into consideration the applicant complying with the custom of his village, the fact remains that this delay in returning to the United States was not due to any "emergent reason." As the applicant is from the same village as his wife, the customs of the village were not unforeseen at the time of his departure.

The applicant's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. Accordingly, the applicant's December 29, 1983 to March 3, 1984 absence interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulation, 8 C.F.R. §§ 245a.11(b) and 245a.15(c)(1).

Accordingly, the applicant 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.