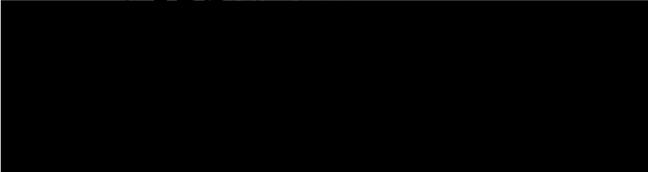




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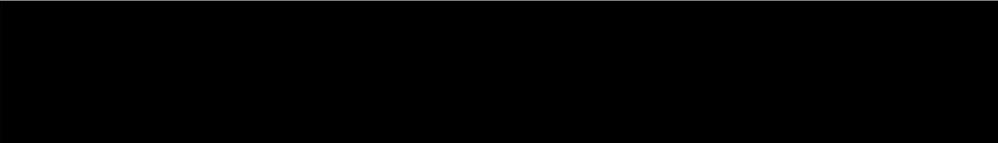
FILE:  Office: Los Angeles  
MSC 01 270 60129

Date: JAN 23 2007

IN RE: Applicant: 

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:



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, Chief  
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 admitted that he had been absent from this country from October 10, 1987 to November 28, 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i).

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period. Counsel asserts that the applicant should also be considered for eligibility as a temporary resident pursuant to 8 C.F.R. § 245a.6.

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. See § 1104(c)(2)(B) of the LIFE Act and 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).

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 petitioner 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 or petitioner 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 or petition.

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).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to 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. Here, the applicant has acknowledged that he broke his continuous residence in this country for the requisite period by admitting that he had been absent from this country for 49 days from October 10, 1987 to November 28, 1987.

The applicant made a claim to class membership 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 or about November 19, 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 an absence from this country from October 10, 1987 to November 28, 1987 when he traveled to Mexico because of his father's illness and the fact that it had been many years since he had seen his family.

A review of the record reveals that the applicant was subsequently interviewed at the Service's Los Angeles, California District Office regarding his Form I-687 application on January 31, 1991. The notes of the interviewing officer reflect that the applicant testified under oath that he traveled to Mexico from October 10, 1987 to November 28, 1987.

Based upon the applicant's own testimony on the Form I-687 application and the testimony he provided at his interview on January 31, 1991 it must be concluded that his admitted absence from the United States from October 10, 1987 to November 28, 1987 constituted forty-nine days, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absence of forty-nine days exceeded the forty-five day limit for a single absence.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period. However, counsel fails to address the fact that the applicant admitted that he exceeded the forty-five day limit for a single absence from the United States during this period when he traveled to Mexico for forty-nine days from October 10, 1987 to November 28, 1987. In addition, neither counsel nor the applicant claims that the applicant's absence was due to an emergent reason. While not dealt with in the district director's decision, there must, nevertheless, be a further 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.”

The applicant provided testimony that he was absent from the United States for forty-nine days from October 10, 1987 to November 28, 1987 when he traveled to Mexico to visit his ill father and see other family members on the Form I-687 application. The applicant’s own testimony establishes that he had knowledge of his father’s illness prior to his departure from this country and should have been aware that an extended period of recovery from such an illness was foreseeable. Without any direct and independent evidence to the contrary, it cannot be concluded that applicant’s absence from the United States of forty-nine days from October 10, 1987 to November 28, 1987 was due to an “emergent reason” within the meaning of *Matter of C, supra*.

Counsel asserts that the applicant should also be considered for eligibility as a temporary resident pursuant to 8 C.F.R. § 245a.6. The regulation at 8 C.F.R. § 245a.6 provides, in pertinent part:

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A).

Clearly, the applicant is an eligible alien as defined at 8 C.F.R. § 245.10 because he made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687 application. However a review of the relevant statute at section 245A(a)(2) of the Act and the corresponding regulations demonstrates that the requirements relating to continuous residence in this country and the length of absences from the United States during the requisite period are identical to those requirements for continuous residence and length of absences set forth in section 1104 of the LIFE Act.

An applicant for temporary residence 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 the date the application is filed. *See* section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(b).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.2(h)(1), as follows:

An applicant for temporary resident status shall be regarded as having resided continuously in the United States if no single absence from the United States if, at the time of filing of the application: no absence 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 through the date the application for temporary resident status was filed, 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.

Consequently, counsel’s assertion that the applicant should also be considered for eligibility as a temporary resident pursuant to 8 C.F.R. § 245a.6 cannot be considered as persuasive because the

applicant was absent from the United States for forty-nine days from October 10, 1987 to November 28, 1987.

The applicant has specifically admitted that he exceeded the forty-five day limit for a single absence from this country when he departed to Mexico on October 10, 1987, and did not return to the United States until November 28, 1987. The applicant did not claim 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.