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U.S. Citizenship
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FILE: 
MSC 02 122 61247

Office: HOUSTON

Date: NOV 28 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:

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, 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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. This matter is remanded for further action and consideration.

The district director determined that the applicant had not established that he was continuously physically present in the United States from November 6, 1986, through May 4, 1988. For this reason alone, the director denied the application.

On appeal, applicant asserts that the director's decision was based on incomplete paperwork in his file. He states that he is now submitting the proper paperwork, as proof of the documents requested.

An applicant for permanent resident status must establish that he was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988. See § 1104(c)(2)(C) of the LIFE Act and 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) 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 absences(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.

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 or 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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to establish continuous physical presence in the United States from November 6, 1986, through May 4, 1988.

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 or about June 18, 1990. In a January 30, 2003, Notice of Intent to Deny (NOID), the director noted that on the applicant's Form I-687, he indicated an absence from the United States from June 4, 1987, to July 8, 1987, to see his parents. On the Form for Determination of Class Membership in *CSS v. Meese*, the applicant confirmed that he departed the United States on June 4, 1987, to Mexico to visit his parents and re-entered into the United States on July 8, 1987. The director also noted that, during the applicant's interview with the CIS officer, the applicant confirmed the single absence was for the purpose of visiting his family in Mexico. The director stated that, under 8 C.F.R. § 245a.15(c) and 8 C.F.R. § 245a.16(b), the applicant failed to establish his exit was for emergent reasons. The director granted the applicant thirty (30) days to rebut and/or submit evidence to overcome the denial.

It is noted that the director applied an outdated version of 8 C.F.R. § 245a.16(b) in the NOID. As previously mentioned, 8 C.F.R. § 245a.16(b) refers to an applicant's continuous physical presence in the United States and the definition of brief, casual, and innocent absences from the United States. The director's reference to 8 C.F.R. § 245a.15(c) pertains to the continuous unlawful residence requirement and permitted absences under such requirement, not the continuously physically present requirement. Under the continuously physically present requirement, the applicant does not need to establish emergent reasons for an absence.

In a February 24, 2004, Notice of Decision (NOD), the director stated that the applicant had submitted a written explanation attempting to explain discrepancies regarding his case, but his credibility had not been established and he failed to prove his eligibility for adjustment under the LIFE Act. It is noted that the director failed to mention these discrepancies and lack of credibility in the NOID, as required under 8 C.F.R. § 245a.20(a)(2).

On appeal, the applicant submitted a letter dated March 10, 2004. The applicant stated that his absence from the United States was due to his father's health conditions. The applicant attached a previously submitted letter by [REDACTED] who treated the applicant's father for serious complications due to diabetes. In an April 3, 2003, letter, [REDACTED] stated that the applicant's presence in Mexico, from June 4, 1987, through July 8, 1987, was necessary due to the gravity of his father's diabetic complications. [REDACTED] also stated that the applicant was present until his father "got better."

Based upon the evidence in the record and the applicant's own statements, the applicant was absent from the United States in the period from June 4, 1987, to July 8, 1987. The AAO finds the applicant's absence to be a brief, casual, and innocent absence from the United States. His single absence from the United States was a temporary trip with a duration of 34 days. As the purpose of the applicant's trip was to visit his father for health reasons, the applicant's absence was consistent with the policies reflected in the immigration laws of the United States. Thus, the applicant has established continuous physical presence in the United States from November 6, 1986, through May 4, 1988, as required under Section 1104(c)(2)(C) of the LIFE Act. Accordingly, the director's decision is withdrawn, and the case will be remanded for further action and consideration pursuant to the above. The new decision, if adverse to the applicant, shall be certified to this office for review.

ORDER: The director's decision is withdrawn. This matter is remanded for further action and consideration pursuant to the above.