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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
MSC 02 358 62646

Office: PHILADELPHIA

Date: **AUG 01 2008**

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 Director, Missouri Service Center. The case was reopened, and denied again by the District Director, Philadelphia, Pennsylvania, and is now 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 under section 1104(c)(2)(B) of the LIFE Act.

On appeal, the applicant submits letters.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The pertinent statutory provision reads as follows:

Section 1104(c)(2)(B)(i). In general – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

“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. Although the term “emergent reason” is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.”

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 its amenability to verification. See 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.

The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on September 23, 2002. On August 30, 2006, the applicant was interviewed in connection with that application. At the time of interview, the applicant signed a statement that he had been absent from the United States from September 8, 1984, to December 28, 1984, in order to get married and assist in the birth of his child.

On November 15, 2006, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant had failed to establish his continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, due to his absence of more than 45 days. The applicant was granted thirty days to respond to the notice.

The applicant responded, on December 15, 2006, with a letter indicating that he had to remain outside of the United States because his then pregnant wife was having complications and was directed by physicians to remain in bed. The applicant provided no medical evidence to support this claim.

On February 22, 2007, the district director denied the application on the basis of the reasons stated in the NOID. The applicant filed an appeal from the district director’s decision on March 23, 2007. Subsequent to the filing of the appeal, the applicant submitted two letters, dated March 20, 2007, and October 23, 2007, stating that he went to Columbia to get married, was planning to stay for a month, but had to remain longer because his wife’s blood pressure was high and she could have had complications with her pregnancy.

The applicant has not established that his return to the United States could not be accomplished within the 45-day time period allowed. In the absence of additional evidence from the applicant, it is determined that his absence from the United States from September 8, 1984, to December 28, 1984, exceeded the 45 day period allowable for a single absence, and that he has failed to establish that his return to the United States could not be accomplished within the time allowed. Accordingly, in the absence of evidence that the applicant intended to return within 45 days, it cannot be concluded that

an emergent reason “which came suddenly into being” delayed or prevented the applicant’s return to the United States beyond the 45-day period.

The applicant has, therefore, failed to establish that he maintained continuous physical presence in the in the United States during the period from January 1, 1982, through May 4, 1988, as required by 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.