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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 02 334 60969

Office: DENVER (SALT LAKE CITY, UT)

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:

[Redacted]

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 District Director, Denver, Colorado, 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 by section 1104(c)(2)(B) of the LIFE Act.

On appeal, counsel submits a brief and additional documentation.

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 August 30, 2002. On July 27, 2004, the applicant was interviewed in connection with his application. At that time he provided affidavits, and a sworn statement before an officer of Citizenship and Immigration Services (CIS), regarding his visits to Mexico from January 1, 1982, to May 4, 1988. The applicant testified to the following departures and re-entries:

1. He departed the United States on February 1, 1982, and returned on May 2, 1982 (an absence of 90 days). The purpose of the trip was to get married.
2. He departed the United States on December 20, 1982, and returned on August 10, 1983 (an absence of 232 days). The purpose of the trip was to be present for the birth of his child on January 20, 1983.
3. He departed the United States on March 30, 1984, and returned on June 5, 1984 (an absence of 66 days). The purpose of the trip was to be present for the birth of his child on April 18, 1984.
4. He departed the United States on December 20, 1987, and returned on July 1, 1988 (an absence of 135 days). The purpose of the trip was to visit his family.

On August 22, 2005, 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 the various lengthy absences from the United States, noted above. The director noted that the applicant had not attested to any emergent reasons why his returns to the United States could not be accomplished within the time allowed. The applicant was granted thirty days to respond to the notice.

In response, the applicant provided a letter dated September 14, 2005, with English translation, from [REDACTED], a Surgeon and Obstetrician associated with the University of Guadalajara, stating that the applicant’s spouse, [REDACTED] suffered

from postpartum depression prior to and after the births of her children – for which she received antidepressant treatment and measured hygienic diets.

On December 29, 2005, the district director denied the application on the basis that the applicant had failed to maintain continuous unlawful residence. The district director noted that even if the applicant's wife's cases of postpartum depression could be considered as being emergent reasons, the depression she suffered during the births of each child (see Nos. 2 and 3, above) that took place within the requisite time period do not account for all of the listed absences (see Nos. 1 and 4, above).

On appeal, counsel states that the applicant accurately listed his visits to Mexico and that it was always the applicant's intention to return to the United States within two weeks after the birth of his children, but he did not return until his wife was able to function on her own. An affidavit from the applicant reiterating this information was also provided by counsel in support of the appeal. Neither counsel nor the applicant address any emergent reasons for the absences listed in Nos. 1 and 4, above.

The applicant's absences from the United States listed in Nos. 1 and 4, above, each exceeded the 45 day period allowable for a single absence, as well as the 180 day aggregate total for all absences. There is no evidence that the applicant intended to return within 45 days of his departures, or that an emergent reason "which came suddenly into being" delayed or prevented the applicant's returns to the United States beyond the 45-day period.

The applicant has failed to establish that he maintained continuous unlawful residence in the United States during the period from prior to 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.