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U.S. Citizenship  
and Immigration  
Services

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L2

[REDACTED]

FILE:

MSC 02 248 62043

Office: Los Angeles

Date:

**JAN 16 2008**

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. 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. The district director also determined that the applicant admitted in a signed sworn statement dated January 21, 2005 that he did not enter this country until January 1982 and was absent from this country for two months in 1985 and three months in 1987. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period. Counsel asserts that the applicant's two absences were longer than forty-five days as a result of his father's illness. Counsel provides copies of previously submitted documents as well as a new statement from the applicant 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. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to

May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

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 provided a signed sworn statement in which he acknowledged that he did not enter this country until January 1982 and that he was absent from this country for two months in 1985 and three months in 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 (Act) on December 14, 1989. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed "[REDACTED]" in El Monte, California from February 1981 to June 1989. In addition, at part #34 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed "none." 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 two absences from this country when he traveled to Mexico from September 1985 to November 1985 "to get married," and from May 1987 to October 1987 because "my father was ill." Furthermore, at part #36 of the Form I-687 application where applicants were asked to list employment in the United States since first entry, the applicant listed employment with [REDACTED] as a gardener from February 1981 to September 1987 and [REDACTED], as a floorman from October 1987 through the date the Form I-687 application was submitted on December 14, 1989.

The record contains photocopied pages from the applicant's Mexican passport containing a stamp reflecting that he obtained a Mexican Border Crossing Identification Card and B-1/B-2 nonimmigrant visa at the United States Embassy in Mexico City, Mexico on August 4, 1987. The passport pages contain a separate stamp demonstrating that the applicant subsequently utilized the visa to enter this country at San Ysidro, California on October 4, 1987. The applicant claimed that he misrepresented material facts in obtaining the nonimmigrant visa with the intent to subsequently remain and reside in the United States after his entry and submitted a Form I-690, Application for Waiver of Inadmissibility pursuant to Section 245A of the Act, in an attempt to overcome the ground of inadmissibility arising from his actions.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an employment letter dated October 19, 1989 that contained the letterhead of [REDACTED]. The letter was signed by [REDACTED] who listed her position as "Personnel/Payroll." [REDACTED] stated that the applicant had been employed in Upholstery Department of this enterprise from October 23, 1987 through the date the letter was executed on October 19, 1989. However, [REDACTED] failed to provide the applicant's address of residence during that period the applicant was employed at [REDACTED], as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 through the date he began his employment on October 23, 1987.

The applicant included an affidavit that was signed by [REDACTED]. Mr. [REDACTED] stated that he and the resided together as co-tenants at [REDACTED], in El Monte, California from February 3, 1981 to July 6, 1989.

The applicant provided five affidavits of residence that were signed by [REDACTED] and [REDACTED], respectively.

These five affiants all attested to the applicant's continuous residence in the United States since various dates in 1981. However; these affidavits are of limited probative value as the affiants failed to provide any specific and verifiable testimony, such as the circumstances under which they met the applicant, the source of their knowledge regarding the applicant, or his address of residence, that would tend to corroborate the applicant's claim of residence in this country for the requisite period.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on June 5, 2002. At part #3C of the Form I-485 LIFE Act application where applicants were asked to list their memberships in or affiliations with every political organization, association, fund, foundation, party, club, society, or similar group, the applicant listed "NONE."

With the Form I-485 LIFE Act application, the applicant included two Form W-2, Wage and Tax Statements, reflecting wages he earned and taxes withheld during his employment for [REDACTED] in 1987 and 1988.

The applicant provided three affidavits dated May 30, 2002 that were signed by [REDACTED], [REDACTED], and [REDACTED] respectively. Each of the affiants listed the applicant's address of residence as of the date the affidavits were executed and noted that they had known the applicant since 1982. Nevertheless, the probative value of these three affidavits is minimal as none of the affiants provided any direct and relevant information to substantiate the applicant's claim of residence in the United States from 1982 through May 4, 1988. In addition, none of the affiants attested to the applicant's residence in this country prior to January 1, 1982.

The applicant submitted a letter dated May 30, 2002 containing the letterhead of the McDonald's franchise owned by [REDACTED] Enterprises in Oceanside, California. The letter was signed by [REDACTED] who listed her position as Store Manager. Ms. [REDACTED] declared that the applicant worked for this McDonald's from April 1982 to July 1982. However, [REDACTED] failed to list either the applicant's address of residence during that period he was employed or the duties of his job as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] failed to attest to the applicant's residence in the United States either prior to January 1, 1982 through the date he began his employment in April 1982 or after his employment ended in July 1982. Moreover, the applicant failed to provide any explanation as to why his employment at this McDonald's was not listed at part #36 of the Form I-687 application where applicants were asked to list employment in the United States since first entry part if he had truly worked for this enterprise.

The applicant included two affidavits that were signed by [REDACTED] and [REDACTED], respectively. Both affiants stated that they had met the applicant in Mexico in October 1981 and that he was married to [REDACTED]. Both affiants declared that they had been friends with applicant since such date and that he subsequently attended their family gatherings on a regular basis. However, neither [REDACTED] nor [REDACTED] attested to the applicant's residence in this country for the requisite period. No explanation was offered as to how [REDACTED] and [REDACTED] met the applicant in Mexico in October 1981 when he claimed that he began his continuous residence in the United States in February 1981

The record reflects that the applicant was subsequently interviewed at Citizenship and Immigration Services' or CIS' (formerly the Immigration and Naturalization Service or the Service) Los Angeles, California District Office regarding his Form I-485 LIFE Act application on January 21, 2005. The notes of the interviewing officer reflect that the applicant was placed under oath and asked to specify the date he first arrived in the United States. These notes

demonstrate the applicant responded by testifying that he entered this country for the first time in January 1982. The notes further reflect that the interviewing officer asked the applicant "Are you sure it was 1982? Not 1981 or 1983?" The applicant responded, "I am sure it was 1982." When asked by the interviewing officer of his exits from the United States during the requisite period, the applicant testified that he left this country for about two months in 1985 and then again for three months in 1987. The record also contains a sworn statement signed by the applicant with his responses written in his own hand in which he reiterated that he entered the United States for the first time in January 1982 and that he had been absent from this country for two months in 1985 and three months in 1987.

The applicant's admission that he did not enter the United States until January 1982 seriously undermined the credibility of his claim of residence in this country before January 1, 1982, as well as the credibility of documents submitted in support of such claim. Further, based upon the applicant's own testimony on the Form I-687 application as well as the testimony and sworn statement he provided at his interview on January 21, 2005, it must be concluded that his two admitted absences from the United States of at least two months in 1985 and at least three months in 1987 both exceeded the forty-five 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 both of his absences exceeded the forty-five day limit for a single absence.

On January 21, 2005, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because the admissions he made in his sworn statement at his interview and his failure to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. Although the district director erroneously stated that the applicant's absences exceeded the 180 limit for the aggregate of total absences days between January 1, 1982, and May 4, 1988 put forth in 8 C.F.R. § 245a.15(c)(1), the district director subsequently corrected the error in the notice of denial by noting that the applicant had actually exceeded the forty-five day limit for a single absence from the United States with each of his two absences. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he asserted that he first entered the United States in February 1981. The applicant declared that while he was proficient in the English language the discrepancy in his testimony regarding the date he first entered this country at his interview arose because "...there are times that I still have difficulty understanding or expressing myself accurately." The applicant also acknowledged that his absences from the United States amounted to five months. However, the applicant's explanation cannot be considered as reasonable as he repeated his testimony that he first entered this country for the first time in January 1982 in a signed sworn statement containing responses written in his own hand. Further, as noted by the applicant himself in his response, the record shows that he

established his competence in reading, writing, and understanding English by passing all tests administered at the time of his interview on January 21, 2005.

The applicant provided a new affidavit signed by [REDACTED], the same individual whose affidavit was included with the filing of the Form I-687 application. Mr. [REDACTED] stated that he knew the applicant came to the United States in February 1981 because he had already been residing in this country since 1975 and subsequently became a naturalized citizen on August 1, 1985. Mr. [REDACTED] noted that since 1981, he had maintained a friendship and regular contact with the applicant as they visited each other at least once a month. However, Mr. [REDACTED]'s testimony in this affidavit is essentially the same offered in his prior affidavit because [REDACTED] failed to provide any specific and verifiable information that would tend to corroborate the applicant's claim of residence in the requisite period.

The applicant included an affidavit signed by [REDACTED] who declared that she had known the applicant since 1981 when he began attending the Nativity Catholic Church in El Monte, California. Ms. [REDACTED] asserted that thereafter she and the applicant would see each other at this church on each subsequent Sunday. Ms. [REDACTED] noted that the applicant was an active member of the church who was and continued to be involved in many church activities. Although [REDACTED] asserted that the applicant was an active member of the Nativity Catholic Church, the applicant failed to list any membership in this church at either part #34 of the Form I-687 application or part #3C of the Form I-485 LIFE Act application. No explanation was put forth as to why the applicant failed to list his membership with the Nativity Catholic Church if in fact he was an active member of the church since 1981.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status since prior to January 1, 1982. The district director further determined that the applicant admitted that he did not enter this country until January 1982 and was absent from this country for two months in 1985 and three months in 1987 in a signed sworn statement. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application on March 2, 2005.

On appeal, counsel reiterates the applicant's claim of continuous residence in this country for the requisite period. Counsel asserts that the applicant's two absences were longer than forty-five days, but asserts that his return to the United States had been delayed by an emergent reason, specifically his father's illness. Counsel provides a new statement from the applicant in which he repeats the assertion that he was absent from this country for more than forty-five days on two occasions during the requisite period because his father had been suffering from a severe respiratory illness. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's two absences from the United States were 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."

Counsel and the applicant both contend that the illness of the applicant's father was the emergent reason that caused both of the applicant absences to exceed the forty-five day limit for a single absence from the United States during the period in question. However, as noted above, the applicant testified that he traveled to Mexico from September 1985 to November 1985 "to get married" at part #35 of the Form I-687 application without any mention of his father being ill. Further, the applicant's testimony that he subsequently traveled to Mexico from May 1987 to October 1987 because "my father was ill" at the same part of the Form I-687 application clearly demonstrates that the purpose of the trip was known before the applicant traveled and cannot be considered an emergent reason that unexpectedly came into being to delay his return to the United States. Moreover, neither the applicant nor counsel provides any evidence to support the claim that the applicant's return to this country on the occasion of his two absences from the United States in the requisite period was delayed by an emergent reason. Without any direct and independent evidence to the contrary, it cannot be concluded that applicant's two absences from this country were due to an "emergent reason" within the meaning of *Matter of C, supra*. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has specifically admitted that he entered the United States for the first time in January 1982 and that his two absences from this country during the requisite period both exceeded the forty-five day limit for a single absence. The applicant has failed to credibly document that an emergent reason delayed his return to the United States on the occasion of either of these two absences. 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. 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 absence(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.

The applicant has admitted that he was absent from the United States for three months in 1987 in testimony on the Form I-687 application as well as the testimony and sworn statement he provided at his interview on January 21, 2005. An absence of three months cannot be considered to be brief. In addition, the applicant acknowledged that he misrepresented material facts in obtaining the nonimmigrant visa with the intent to subsequently remain and reside in the United States after his entry on October 4, 1987. The applicant's manner of reentry to the United States on this date was contrary to the policies reflected in the immigration laws of this country and cannot be considered as innocent. As such, it cannot be concluded that the purpose of the applicant's absence in that period from November 6, 1986 to May 4, 1988 was either brief or innocent within the meaning of 8 C.F.R. § 245a.16(b).

Thus, the applicant failed to establish that he was continuously physical present in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 as required by 8 C.F.R. § 245a.11(c), and, therefore, is ineligible to adjust permanent resident status under the provisions of the LIFE Act on this basis as well.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.