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U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED] Office: DALLAS
MSC 02 020 61929

Date: **JUL 03 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.


for 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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated he had maintained continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988.

On appeal, the applicant submits a brief statement.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

“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.

Pursuant to 8 C.F.R. § 245a.16(b), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by brief, casual, and innocent absences from the United States. Brief, casual, and innocent absences 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 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.

On June 22, 1994, the applicant applied for class membership in a legalization class-action lawsuit and submitted a Form I-687, Application for Status as a Temporary Resident. On the application, the applicant indicated that he had entered the United States in 1981, and had departed on only one occasion – from May 10, 1987, to June 26, 1987, in order to visit his family in Mexico. In support of the application the applicant submitted:

1. An affidavit, dated March 26, 1990, from [REDACTED] stating that he had been a co-tenant with the applicant in North Hollywood, California, since 1985.
2. An affidavit, dated March 26, 1990, from [REDACTED], stating that she met the applicant through mutual friends and has personal knowledge that the applicant had resided in North Hollywood, California, since 1981.
3. An affidavit, dated April 4, 1990, from [REDACTED], stating that the applicant traveled to Mexico to visit his family on May 10, 1987, returning to the United States on June 26, 1987.

While not required, the above-noted affidavits were not accompanied by proof of identification or any evidence that the affiants actually resided in the United States during the relevant period. The affiants are generally vague as to how they date their acquaintances with the applicant, how often and/or under what circumstances they had contact with the applicant during the relevant period, and lack details that would lend credibility to their claims. As such, the statements can be afforded only minimal weight as evidence of the applicant’s residence and presence in the United States.

The applicant filed the current Form I-485, Application to Register Permanent Resident or Adjust Status, under the LIFE Act on October 20, 2001. In support of the Form I-485, the applicant submitted the following additional documentation in an attempt to establish his unlawful residence in the United States from before January 1, 1982, through May 4, 1988:

4. An affidavit, dated September 27, 2001, from [REDACTED], stating that he had known the applicant for 20 years through their work in farm labor agriculture. The affidavit lists the applicant’s addresses in California from 1981 through 2001 as follows: Earlimart (January 1981 to January 1990); Tipton (January 1990 to January

1995); North Hollywood (January 1995 to January 2000): and, Earlimart (January 2000 to September 2001).

5. A similar affidavit, dated September 27, 2001, from [REDACTED], stating that he had known the applicant for around 21 years, having met through mutual friends. [REDACTED] lists the same addresses for the applicant in California from 1981 through 2001 as did [REDACTED] in No 4, above.
6. An affidavit, dated August 15, 2001, from [REDACTED] stating that the applicant entered the United States in June 1981, and that the applicant and his wife shared living expenses with his ([REDACTED]' parents) from 1981 through 1990 in North Hollywood, California.¹

The affidavits - Nos. 4, 5, and 6 - suffer from the same deficiencies noted in Nos. 1, 2, and 3, above. It is also noted that the address (in North Hollywood, California) provided for the applicant from 1981 through 1990 by the affiants in Nos. 1, 2, and 6 differs from the address (in Earlimart, California) provided by the affiants in Nos. 4 and 5.

The applicant was interviewed in connection with his Form I-485 on May 2, 2006. At the time of interview, the applicant again stated that he had initially entered the United States in 1981 and had departed the United States once – from May 10, 1987, to June 26, 1987.

On May 13, 2006, the district director issued a Notice of Intent to Deny (NOID) the application because the applicant failed to establish his continuous physical presence in the United States from November 6, 1986, through May 4, 1988, due to his absence from the United States from May 10, 1987, to June 26, 1987 - in excess of the 45 days allowed under the LIFE Act. The applicant was granted thirty days to respond to the notice. The record reflects that the applicant failed to respond to the NOID.

On August 8, 2006, the district director denied the application on the basis of the reason stated in the NOID. The district director's determination that the applicant had been absent from the United States for "approximately 46 days" in 1987 is based on the applicant's own testimony in a sworn, signed statement taken at the time of his interview on May 2, 2006, under oath and in the presence of an officer of Citizenship and Immigration Services (CIS), as well as on evidence and statements previously submitted by him.

On appeal, the applicant asserts that his departure from the United States was "...in part because of a family emergency. My mother was severely ill. I was severely distraught during the ordeal and felt that my mother needed my support. During my whole stay outside of the United States, I was helping my mother recuperate from her illness those forty six [sic] days..." On appeal, the applicant has submitted no additional documentation regarding his mother's illness that would establish that his

¹ It is noted that at the time of filing his Form I-687, the applicant indicated he was single/never married. On a Form G-325, Biographic Information, submitted in support of his Form I-485, the applicant indicated that he married [REDACTED] z (possibly the affiant in No. 2) on January 12, 1990, in Mexico.

return to the United States could not be accomplished within the time period allowed due to emergent reasons.

The issue in this proceeding is whether the applicant has established his continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, or, in the alternative, that any departure from the United States during that time for more than 45 days was due to emergent reasons.

The applicant has admitted that he departed the United States for more than 45 days during the requisite time period. On appeal, he has submitted no evidence – other than his own statement that he had to remain in Mexico due to his mother’s illness - that his return to the United States was delayed due to emergent reasons.

The record contains numerous discrepancies regarding the applicant’s mother that call into question the validity of his claim. The applicant claimed on a Form G-325 (signed on August 7, 2001) that his mother, [REDACTED], had died in 1971. There is also a statement contained in the record from the applicant, dated December 26, 2002, stating that his “...mom and dad passed away long time ago...”² However, the record also contains a physician’s letter from Mexico, dated January 14, 1998, stating that the applicant’s mother, [REDACTED] was ill, and a letter from the applicant indicating that he needed to travel to Mexico because, as the only son, he needed to be there with her and authorize her surgery.³ Finally, the applicant had previously indicated on his Form I-687 that, in fact, he had two brothers – [REDACTED] and [REDACTED].

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

It is determined that the applicant’s absence from the United States from May 10, 1987, to June 26, 1987, 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, and in view of the numerous discrepancies contained in the record, it cannot be concluded that an emergent reason “which came suddenly into being” delayed or prevented the applicant’s return to the United States within the 45-day period.

² The applicant’s birth certificate lists his mother’s name as [REDACTED]

³ The physician’s letter and statement from the applicant were submitted in support of a Form I-131, Application for Travel Document, filed by the applicant on or about January 14, 1998. On that application, the applicant stated the purpose of his absence from the United States was “Mom very sick and she wants to see me. And doctor needs my authorization.”

Furthermore, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), and no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, or automobile, contract, and insurance documentation) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (I) and (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). As previously noted, these affidavits, which contain contradictory information, lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – during the requisite time period from 1982 through 1988.

The applicant has failed to establish that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988, and that he maintained continuous physical presence in the United States during the period from November 6, 1986, through May 4, 1988, as required under sections 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A). 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.