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**U.S. Citizenship  
and Immigration  
Services**

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[Redacted]

FILE: [Redacted]  
MSC 01 297 60272

Office: EL PASO

Date: **MAY 23 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, El Paso, Texas, 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, counsel submits a brief and a letter from the applicant.

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 July 24, 2001. On March 12, 2003, the applicant was interviewed in connection with that application. At the time of interview, the applicant stated that he initially entered the United States in 1979 or 1980, and had been absent from the United States from June 1987 to September 1987 due to the death of his grandmother and subsequent family obligations.

On January 26, 2004, 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 record reflects that the applicant failed to respond.<sup>1</sup>

On September 30, 2005, the district director denied the application on the basis of the reasons stated in the NOID. The district director’s determination that the applicant had been absent from the United States for “approximately three to four months” in 1987 based on the applicant’s own testimony in a sworn, signed statement taken at the time of his interview on March 12, 2003, under oath and in the presence of an officer of Citizenship and Immigration Services (CIS).

On appeal, counsel asserts that notwithstanding the applicant’s single absence for over 45 days, he is still eligible for adjustment of status to permanent resident under the LIFE Act because he never abandoned his residence in the United States, was never ordered removed, left due to emergent reasons, and it was emergent and unexpected reasons that caused him to remain outside of the United States longer than expected. Counsel further asserts that the applicant has United States citizen children he needs to support, and that hardship will be created if he is forced to leave the United States. In support of the appeal, counsel submits a letter from the applicant explaining that his grandmother

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<sup>1</sup> The record reflects that the NOID was mailed to the applicant at his correct address of record at that time: [REDACTED], El Paso, Texas 79927, and that a copy of the NOID was mailed to his attorney of record. The notice mailed to the applicant was returned as undeliverable. CIS did not learn that the applicant had changed his address - to his current address at [REDACTED], El Paso, Texas 79928 - until May 2005, when he filed a Form I-765, Application for Employment Authorization.

died of electrocution, and that after two days of the wake, his mother asked him not to leave her alone since he had to make arrangements regarding his grandmother's properties and belongings.

The record contains a photocopy, with English translation, of the death certificate of the applicant's grandmother, indicating that she died in Juarez, Mexico, due to a heart attack, on June 9, 1987. Juarez, Mexico – where the applicant was born and resided prior to his entry into the United States - is just across the border from El Paso, Texas. The record also contains information indicating that the applicant has siblings (two brothers) who were born in Juarez, Mexico. As of the time of filing a Form I-697, Application for Temporary Residence (Under Section 245A of the Life Act), one of his brother's resided in Juarez, Mexico, and the other was a lawful permanent resident of the United States living in Los Angeles, California.

While the applicant has established that his departure from the United States was due to emergent reasons (by means of the death certificate of his grandmother), he has not established that his return to the United States could not be accomplished with the 45-day time period allowed. The applicant has provided no evidence, other than a self-serving statement, to establish emergent reasons for his remaining beyond the 45-day period, such as documentation establishing his claims that he was required, for legal reasons, to remain to take care of his grandmother's assets; or that there were no other family members available to support his mother in dealing with her grief.

In the absence of additional evidence from the applicant, it is determined that his absence from the United States from June 1987 to September 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, 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.