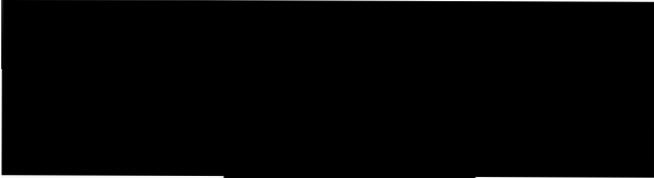


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FILE: [Redacted]
MSC 02 092 62917

Office: Sacramento

Date: **MAR 24 2006**

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: Self-represented

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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, San Francisco, 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. This decision was based on the district director's conclusion that the applicant admitted that he had been deported from this country in 1984 and had been absent for almost four months before he illegally entered and returned to the United States, and, therefore, exceeded the forty-five (45) 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).

On appeal, the applicant asserts that he had not been deported from the United States in 1984, but instead had voluntarily departed the country.

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. See § 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 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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true. See *Matter of E-- M--*, 20 I&N Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member 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 July 2, 1991. 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 indicated that he had been absent from this country for an unspecified number of days when he traveled to Mexico because of his father's hospitalization in July 1987. The applicant included a "Form for Determination of Class Membership in *CSS v. Meese*" in which he

indicated that he departed the United States by bus for Mexico on July 7, 1987 and then returned to this country when he crossed the border on foot and entered without inspection on July 28 1987, and that the purpose of his trip had been his father's hospitalization.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted ten photocopies of postmarked envelopes, fourteen photocopied receipts for registered mail, photocopies of nine handwritten receipts, photocopied pages of a bank book, a photocopied receipt for car repairs, four photocopies of purchaser's copies of money orders, a photocopy of a student identification card, a photocopied health insurance card, two photocopied California Interim Driver Licenses, a photocopy of a Form W-2, Wage and Tax Statement, five photocopied paycheck stubs, a photocopy of a receipt from the California Department of Motor Vehicles, a photocopy of a receipt from the General Telephone Company of California, and a photocopied California Identification Card.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on December 31, 2001. While the applicant provided copies of previously submitted documentation with the Form I-485 LIFE Act application, he failed to submit any new evidence in support of his claim of continuous residence in this country since prior to January 1, 1982.

The record reflects that the applicant appeared for an interview relating to his LIFE Act application at Citizenship and Immigration Services' Sacramento, California office on May 19, 2004. During the course of this interview, the interviewing officer's notes reflect that the applicant testified under oath that he had been deported from the United States in 1984 and that he remained outside the country for almost four months before returning to the United States. The record further shows that the applicant reaffirmed his testimony that he had absent from this country for almost four months after having been deported from the United States in 1984 by signing the interviewing officer's notes.

Based upon the applicant's own sworn testimony it must be concluded that his admitted absence from the United States of approximately one-hundred twenty days after he departed from the United States in 1984 exceeded the forty-five (45) day limit for a single absence from this country during the period from January 1, 1982 to May 4, 1988 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 his absence exceeded the forty-five day limit for a single absence.

In response to the notice of intent to deny and on appeal, the applicant asserts that he had not been deported from the United States in 1984, but instead had voluntarily departed the country. Although the record contains a Federal Bureau of Investigation printout indicating that the applicant was arrested by the United States Border Patrol for an unspecified immigration violation and placed into deportation proceedings on November 11, 1984, neither the administrative nor electronic record reflect that he was deported as a result of his arrest on this date. Nevertheless, the applicant fails to address the fact that he admitted that he had been absent from the United States for almost four months subsequent to his voluntary departure from this country in November 1984 and, therefore, he had exceeded the forty-five limit for a single absence as provided in 8 C.F.R. § 245a.15(c)(1). The applicant does not claim that his return to this country was delayed by an emergent reason. In addition, the applicant fails to provide any explanation as to why he did not list this absence 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.

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 application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has specifically admitted that he exceeded the forty-five day limit for a single absence from this country when he was absent from the United States for almost four months subsequent to his voluntary departure from the United States in November 1984. The applicant has neither claimed nor documented that an emergent reason delayed his return to the United States. 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.

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