U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Los Angeles Date: MAR 27 2006
MSC 01 335 60972

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.

Mari Johnson

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, 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. This decision was based on the district director's conclusion that the applicant admitted that he had been absent from this country for three months in 1985 and two months in 1987, and, therefore, on two separate occasions 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, counsel asserts the applicant's returns to this country after his absences from the United States in 1985 and 1987 were due to emergent reasons, and that the district director had failed to consider this issue in determining that the applicant was not eligible to adjust to permanent residence under the provisions of the LIFE Act. Counsel asserts that 8 C.F.R. § 245a.15(c)(1) and the precedent decision reached in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) require that the applicant's absences be examined in this context to determine his eligibility.

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, the proof submitted by the applicant has to establish only that the assertion or asserted claim 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 or about December 7, 1992. 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 sixteen days when he traveled to Mexico for a vacation from October 13, 1987 to October 29, 1987. The applicant included a "Form for Determination of Class Membership in CSS v. Meese" in which he reiterated that he departed the United States for Mexico on October 13, 1987, returned to this country on October 29, 1987, and that the purpose of his trip was a vacation.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted six affidavits, two employment letters, a "Notice of Sale or Transfer of a Vehicle or Vessel and Odometer Mileage Statement," a "California State Lottery Instant Game High Tier Winner Claim," a California Driver License, and tax documents.

The applicant subsequently filed his Form I-485 LIFE Act application on August 31, 2001. The record shows that the applicant appeared for an interview relating to his LIFE Act application at the Los Angeles, California District Office on June 20, 2003. The notes of the interviewing officer reveal that the applicant testified under oath that he departed the United States for Mexico in October 1985 and that he remained in Mexico for three months on a vacation before returning to this country. The applicant also admitted that he departed this country again in October 1987 to visit his father in Mexico and that he returned to the United States two months later. However, the applicant's testimony that he had been absent from this country for two months beginning in October 1987 directly contradicted his previous testimony that he had been absent from this country for sixteen days when he traveled to Mexico for a vacation from October 13, 1987 to October 29, 1987 at part #35 of the Form I-687 application. Further, the applicant failed to provide any explanation as to why his additional absence from the United States of three months beginning in October 1985 for a vacation in Mexico was not listed at part #35 of the Form I-687 application.

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 admitted that he had been absent from this country for three months in 1985 and two months in 1987, and, therefore, exceeded the forty-five day limit for a single absence from the United States during this period on two separate occasions. 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 absences of approximately ninety days in 1985 and sixty days in 1987 both exceeded the forty-five day limit for a single absence.

In response to the notice of intent to deny and on appeal, counsel acknowledges the applicant's two absences from this country in 1985 and 1987, but asserts that his return to the United States had been delayed by emergent reasons on each of these two occasions. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's prolonged 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."

In response to the notice of intent to deny, the applicant submitted a statement in which he acknowledged that he had been absent from the United States in excess of forty-five days beginning in October 1985 when he traveled to Queretaro, Mexico to aid his parents recover from damage suffered from earthquakes that occurred in September 1985. The applicant stated that he intended to return to this country within thirty days of his departure but his return to the United States was delayed because the extent of damage necessitated that he stay to effect repairs to his parent's home. The applicant declared that the time needed to make these repairs was increased because of a lack of basic utilities, services, resources, and funds. However, it must be noted that applicant failed to make any mention that the purpose of his trip to Mexico in 1985 was to visit his parents as a result of recent earthquakes. Instead, he testified under oath at his interview on June 20, 2003 that he departed the United States for Mexico in October 1985 and remained there for three months on a vacation before returning to this country. The applicant failed to provide any explanation as to why he had not previously provided testimony at his interview regarding earthquake damage suffered by his parents and his time spent in Mexico making repairs to their home. While it is acknowledged that earthquake damage devastated widespread areas in Mexico in September 1985, including Mexico City and the Federal District of Mexico, as well as the states of Jalisco, Colima, Michoacan, Mexico, Morelos, and Guerrero, the applicant has failed to provide any direct evidence to negate his prior testimony that he departed the United States for Mexico in October 1985 for a three month vacation and corroborate his claim that he went to Mexico to repair damage incurred to his parent's home as the result of an earthquake. Even if the applicant's claim regarding the purpose of his trip on this occasion is viewed in a manner most favorable to him, it is foreseeable that extensive delays could be experienced in returning from a trip to an earthquake damaged area to make repairs on a residence because of the lack of basic utilities, services, resources, and funds.

The applicant contended that his second absence from the United States occurred from mid-October of 1987 to December 4, 1987 and may or may not have been less than forty-five days. The applicant declared that his return from this trip was delayed by a variety of emergent reasons, including mechanical problems experienced by the bus on which he was traveling, apprehension and detention by officers of the Border Patrol in his first attempt to reenter the United States, returning to Mexico to avoid apprehension by officers of the Border Patrol on his second attempt to reenter this country, and traveling to Tijuana, Mexico by bus where he successfully entered the United States. However, the applicant has seriously impaired his credibility by initially claiming that this absence was a vacation to Mexico that lasted sixteen days from October 13, 1987 to October 29, 1987 at part #35 on the Form I-687 application, subsequently testifying that he was in Mexico for two months beginning on October 1987 to visit his father at his interview on June 20, 2003, and now claiming that this absence lasted approximately forty-five days from mid-October of 1987 to December 4, 1987 with his return being delayed by a variety of adverse circumstances. Further, the applicant has failed to provide any direct evidence to corroborate his claim that his return to the United States was delayed by the happenings and circumstances he has described. The applicant previously testified at his interview on June 20, 2003 that he departed this country in October 1987 for a two month visit with his father in Mexico and failed to make mention that his return to the United States on this occasion had been delayed for any reason. Even if the applicant's claims relating to the circumstances that delayed his return to this country in 1987 were viewed in a manner most

favorable to him, it is foreseeable that an individual could experience extensive delays when traveling large distances by bus and attempting to reenter the United States without inspection by illegally crossing the border.

Without any direct and independent evidence to the contrary, it cannot be concluded that either of applicant's absences from the United States in 1985 and 1987 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).

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).

Based on the conflicting information regarding the length of his departures and the reasons for his absences, the applicant has not established that he resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988.

The applicant has specifically admitted that he exceeded the forty-five day limit for a single absence on two separate occasions when he traveled to Mexico in 1985 and 1987. The applicant has failed to submit sufficient evidence to establish that emergent reasons delayed his return to the United States in either 1985 or 1987. 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.