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

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**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**PUBLIC COPY**

[redacted]

FILE: [redacted] Office: HOUSTON Date: MAR 31 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. Any further inquiry must be made to that office.

Marie 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 Acting District Director, Houston, 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 that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for single absences from the United States during the requisite period and his failure to reveal his 1984 departure from the United States.

On appeal, the applicant asserted that he never received the Notice of Intent to Deny; therefore, he was not afforded the opportunity to address the director's findings.

A copy of the Notice of Intent to Deny was subsequently sent to the applicant's address of record. In response, the applicant put forth a brief disputing the director's findings.

"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.

In his Notice of Intent to Deny issued on January 30, 2003, the director informed the applicant that in a sworn statement and during his interview he indicated only three absences from the United States during the requisite period; April 1983 to May 1983 for one month, June 2, 1987 to July 6, 1987 for 34 days and during May 1988. The director indicated:

> You also informed the Service that the purpose of the trip during June 02, 1987 through July 6, 1987, total 34 days is to visit your family in Mexico. Therefore you failed to establish that due to emergent reasons, your return to the United States could not be accomplished within the time period allowed.
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> * * *
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> Also based on your absence, you failed to maintain continuous physical presence in the United States from November 6, 1986 through May 4, 1988, in that your absence during this period was over 30 days.

The director's findings, however, are incorrect. As previously noted, the regulation at 8 C.F.R. § 245a.15(c)(1) states in part that no **single** absence from the United States has exceeded forty-five (45) days. (Emphasis added.) As such, there was no need for the applicant to establish that his single absence of over 30 days in 1987 was due to an emergent reason. Although this office disagrees with the director's reasoning that the alien has failed to establish his continuous unlawful residence since prior to January 1, 1982 based on his departure, we agree with the director's ultimate determination based on other grounds. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district 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).

The director, in his Notice of Intent to Deny, further indicated that the applicant only listed his 1987 departure from the United States on his Form I-687 application; however, evidence in the record reflected that the applicant was married in Mexico in December 1984.

Although the applicant did not list his departure on his Form I-687 application, he acknowledged, at the time his LIFE application was submitted, his 1984 marriage. The record reflects that the applicant provided a self-serving statement dated May 1, 2002 indicating "I also wish to state that during this time, I would return to my home in Mexico for a week or two to visit my parents and girlfriend twice a year."

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. 8 C.F.R. § 245a.11(b).

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).

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.

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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the submitted evidence is not relevant, probative, and credible. The applicant claims that he first entered the United States in November 1981 and resided until 1984 with [redacted], who was a close friend of his parents. The applicant provided affidavits from [redacted] who attested to the applicant's residence in the United States since 1981. Mr. [redacted] indicated that he employed the applicant as a gardener from November 1981 to June 1985. The applicant also provided affidavits from five individuals who attested to the applicant's residence in the United States prior to January 1, 1982.

A review of the record reveals that an Application for Alien Employment Certification was signed and dated April 12, 1988 by the applicant. In this application, the applicant indicated that he was employed as a cook at Restaurante Bar [redacted] in Casimiro Castillo, Jalisco, Mexico from September 1980 until October 1982. This fact undermines the applicant's claim to have been residing in the United States prior to October 1982. Likewise, Mr. [redacted]s employment letter and the affiants' affidavits have no probative value or evidentiary weight as they contradict the Application for Alien Employment Certification. The applicant provides no explanation to resolve this contradiction.

From a review of the *credible* documentation the applicant has provided, it appears that the applicant's first entry into the United States occurred in 1985.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 this discrepancy, the applicant has not established continuous residence in the United States during the requisite period.

It is concluded that the applicant has not demonstrated that he entered the United States prior to January 1, 1982, and has failed to establish that he resided in *continuous* unlawful status since that time through 1984. Therefore, the applicant 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.