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

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[redacted]

FILE: [redacted] Office: HOUSTON Date: NOV 15 2007

MSC 02 255 62007

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. Any further inquiry must be made to that office.

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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 aggregate limit of 180 days for total absences from the United States during the requisite period

On appeal, counsel asserts that the applicant did not provide information regarding the specific dates because it was not requested on the Form I-687 application. Counsel states that no clarification was requested at the time of his LIFE interview or through a notice to the applicant. Counsel asserts that the applicant was never outside of the United States for more than approximately 21 days at a time.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988.

"Continuous residence" is defined in the regulations at 8 C.F.R. § 245a.15(c)(1), as follows:

> *Continuous residence*. An alien shall be regarded as having resided continuously in the United States if:
>
> (1) 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. [Emphasis added.]

On his Form I-687 Application for Status as a Temporary Resident signed on June 18, 1991, the applicant indicated at item 35 that he departed the United States as follows:

> During September 1982 to visit relatives in Mexico
> March 1983 to April 1983 to visit relatives and renew his visa in Mexico
> During June and November 1983 to visit relatives in Mexico
> During May and August 1984 to visit relatives in Mexico
> October 1984 to November 1984 to visit relatives in Mexico
> December 1984 to January 1985 to visit relatives during Christmas in Mexico

On January 21 2004, the applicant was advised in writing of the director's intent to deny the application. In his notice, the director determined that the applicant was absent for 30 days during each departure from the United States and, therefore, exceeded the aggregate limit of 180 days for total absences during the requisite period. The applicant was also advised that he had not established that said absences were due to emergent reasons.

The director, in denying the application, noted that the applicant did not respond to the notice. However, evidence in the record indicates that a response was received by the Houston District Office prior to the issuance of the director's decision. The applicant's response will be considered on appeal.

Counsel, in response, submitted an affidavit from the applicant who indicated that none of his absences exceeded 30 days and aggregate of his absences did not exceed 180 days. The applicant detailed his absences during the requisite period as follows:

> Departed between September 20-22, 1982 and returned on September 28, 1982 (7 to 9 days).
> Departed between March 25-27, 1983 and returned on April 14, 1983 (19-21 days).
> Departed between June 16-17, 1983 and returned on June 23, 1983 (7 to 8 days).
> Departed between November 4-5, 1983 and returned on November 15, 1983 (11 to 12 days).
> Departed between May 24-25, 1984 and returned on May 31, 1984 (6 to 7 days).
> Departed between August 20-21, 1984 and returned on August 28, 1984 (8 to 9 days).
> Departed between October 25-26, 1984 and returned on November 2, 1984 (8 to 9 days).
> Departed between December 23-24, 1984 and returned January 3, 1985 (11 to 12 days).

The applicant presented an additional copy of his Spanish passport issued on March 29, 1983 at the Spain Consulate General in Mexico, which revealed that on March 30, 1983, the applicant was issued a B-2 multiple entry non-immigrant visa. The passport reflects that the applicant lawfully entered the United States on April 14, 1983, June 23, 1983, November 15, 1983, May 31, 1984, August 28, 1984 November 2, 1984, and January 3, 2005.

The applicant indicated that he no longer possessed his passport which would establish his September 28, 1982 entry into the United States because he gave it to an individual, who was posing as an attorney, and who was supposed to assist in filing his *LULAC* application in 1991. The applicant indicated he did not depart the United States from November 6, 1986 through May 4, 1988.

The applicant also submitted affidavits from:

- [redacted] of Houston Texas, who indicated he has known the applicant since 1981 and he took a trip with the applicant on October 25, 1984 for approximately ten days to Mexico and returned on November 2, 1984.
- [redacted], of Col. [redacted], Mexico, who indicated that he has known the applicant since 1972 and attested to the applicant's departure to Houston, Texas in 1981. The affiant indicated he picked up the applicant at the Mexico City airport and took him back to said airport every time he came to visit his family in 1982, 1983, 1984 and 1985. The affiant asserted that the trips did not last more than ten days on average and was less than 100 days during 1982 and 1988.
- [redacted] of Houston, Texas, who indicated that he has known the applicant since 1979 in Mexico City and attested to the applicant's residence at his home in Houston, Texas from 1981 to 1986. The affiant indicated he took the applicant to the airport each time he departed to Mexico and picked him up when he returned to the United States in 1982, 1982, 1984 and 1985. The affiant provided the dates and number of days for each of absence.

Because the exact dates of the applicant's departures from the United States was not listed on his Form I-87 application, and no sworn statement was taken at the time of his LIFE interview, it cannot be determined that the applicant was outside of the United States for a period of 30 days during each

absence. Based on the applicant's statement and entry date stamps contained in his passport, it is concluded that the applicant did not exceed the aggregate limit of 180 days for total absences during the requisite period. As such, the issue whether each absence was due to an emergent reason need not be addressed.

Pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, an 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, now the Secretary, Department of Homeland Security (Secretary), under section 245A(g) of the Immigration and Nationality Act (the Act) that were most recently in effect before the date of the enactment of this Act shall apply.

Therefore, eligibility also exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. § 245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), 8 C.F.R. § 245a.2(b)(10).

As a result of the applicant's misrepresentation in procuring a B-2 visitor's visa in 1983, the applicant is inadmissible under section 212(a)(6)(C) of the Act. However, such inadmissibility may be waived. The record reflects that along with his Form I-687 application, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

Finally, the record contains a FBI report dated July 20, 2002, which indicates that on January 13, 1995, the applicant was arrested by the Houston Police Department for driving while intoxicated. The final outcome, however, is unknown.

ORDER: The appeal is sustained.