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

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[redacted]

FILE: [redacted] Office: DALLAS Date: JUL 01 2008

MSC 02 219 61109

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. 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.

for 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 Acting District Director, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director decided 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. This decision was based on the district director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period.

On appeal, counsel asserts that the applicant acknowledges his prolonged absence from the United States, but states that the reason was due to emergent medical reasons. Counsel states that the applicant had provided a medical report from his doctor, who described in chronological order, the treatment the applicant received.

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. Section 1104(c)(2)(B)(i) of the LIFE Act; 8 C.F.R. § 245a.11(b).

"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, the applicant indicated at item 35 that he departed the United States in March 1988 due to illness and returned in May 1989.

At the time of his initial interview on July 15, 1993, the applicant, in a sworn statement, admitted that he departed the United States in March 1988 and returned in May 1989. The applicant asserted that he departed the United States because he was ill and needed to see a doctor.

On September 7, 2004, the applicant was advised in writing of the director's intent to deny the application. In her notice of intent, the director indicated that, due to the applicant's absence of more than 30 days, he had disrupted his physical presence in the United States.

Counsel, in response, asserted that the applicant departed the United in March 1988 to undergo reconstructive surgery on his face and eye due to an accident he had as a child. Counsel submitted a medical report in the Spanish language with the required English translation from [redacted] a family doctor at Social Security Mexican Institute General Hospital in San Luis Potosi, Mexico. The doctor indicated that the applicant was treated at the hospital from April 19, 1988, to May 7, 1989, due to burns on his face, neck and right shoulder he received at the age of five. The English translation indicates, in pertinent part, "[a]fter, immigrated to the U.S.A. at the age of 14 when he was

treated the last two months but due to the cost of the examinations he comes back to Mexico...." The doctor provided a chronological order of the treatment during this time period.

The director, in denying the application, determined that the applicant's absence exceeded 30 days and he had no provided any evidence of an emergent reason.

On appeal, counsel asserts that while in the United States, the applicant decided to seek medical attention for his burns and the possibility of reconstructive surgery; however, due to the cost of the treatment he declined any medical procedures. Counsel submits an additional letter from the doctor, with English translation, who indicated that said surgery could not be postponed any longer "because there was a high risk of losing his right eye due to a secondary cronic [sic] conjuntivitis [sic] causing difficulty to open and close his eye correctly." Counsel also submits photographs of the applicant before and after the surgery.

It must be noted that the director erred in applying a thirty (30) day limit for a single absence in the period from November 6, 1986, to May 4, 1988, as set forth in 8 C.F.R. § 245a.16(b). This regulation has been amended and the previous reference to a "thirty (30) day limit" on absences has been removed. The current, amended regulation reads as follows:

> For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

It is not necessary for the applicant to provide an *emergent reason* for physical presence as the regulation at 8 C.F.R. § 245a.16(b) does not require it. *If* the applicant's absence has exceeded 45 days, his absence will be examined utilizing the standard set forth in 8 C.F.R. § 245a.15(c)(1), and evidence would be required to make a determination whether his prolonged absence from the United States was due to an emergent reason.

The applicant's absence exceeded the 45-day limit for a single absence as the affidavit provided by his former landlord attested to the applicant's place of residence in the United States until March 3, 1988.

Although 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." In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. However, in the instant case, that was not the situation. Even before the applicant's appointment on April 19, 1988 in Mexico, the applicant's absence from the United States had exceeded the 45-day limit allowed by 8 C.F.R. § 245a.15(c)(1). There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States on or before April 16, 1988. Moreover, this absence was not due to any "emergent reason" – *i.e.*, one that was unforeseen at the time of his departure – because seeking treatment at a medical facility in Mexico was the specific reason for the applicant's absence from the United States. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events.

Moreover, section 101(a)(33) of the Immigration and Nationality Act defines the term "residence" as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place, in fact, without regard to intent." The applicant has provided no evidence that he maintained any "principal, actual dwelling place" in the United States from March 4, 1988, to May 4, 1988. Whether or not the applicant's departure from the United States to Mexico was voluntary, his actual dwelling place during the period in question was out of the United States.

The applicant's two-month stay in Mexico during the requisite period interrupted his "continuous residence" in the United States. Therefore, the applicant has failed to establish that he resided in the United States in an continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by the statute, section 1104(c)(2)(B)(i) of the LIFE Act, and the regulations, 8 C.F.R. §§ 245a.11(b) and 15(c)(1). Accordingly, 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.