U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 22 2008

MSC 02 215 60916

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant disrupted his continuous residence in the United States under 8 C.F.R. § 245a.16 by traveling to Mexico in March 1986 and returning to the United States six months later.

On appeal, the applicant asserts that the director did not consider his reason for not returning from Mexico in under 45 days. He asserts that he could not arrange a safe return and his situation was out of his control.

The issue in this proceeding is whether the applicant's absence from December 1986 through February 1987 broke his required continuous residence.

Section 1104(c)(2)(B) of the LIFE Act states:

> (i) In General – 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. 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 under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

According to 8 C.F.R. § 245a.15(c)(1), an applicant for adjustment of status under the LIFE Act shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The record reflects than on May 3, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 29, 2004, the applicant appeared for an interview based on his application. During his interview, the applicant told the interviewing officer that he first entered the United States in June 1981. Then, in March 1986, he traveled to Mexico to visit family and returned to the United States six months later. The applicant signed a statement asserting these facts before the interviewing officer.

On July 28, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application. The director found that the applicant's six month absence from the United States in 1986 disrupted his continuous residence under 8 C.F.R. § 245a.15(c)(1). The director informed

the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, the applicant submitted a written statement, explaining that he traveled to Mexico and that he was absent for 130 days. He stated that when he got back, he continued living at the address he had lived at before. He also submitted previously submitted documents.

On September 7, 2006, the director denied the application. The director found that the applicant disrupted his continuous residence in the United States during the statutory period of January 1, 1982, through May 4, 1988.

On appeal, the applicant submits previously submitted documents, including a Social Security Statement dated October 4, 2005, indicating earnings from 1986 to 2004, and a letter dated August 6, 1992, from [redacted] the applicant's former manager and employer.

These documents do not address the applicant's six month absence from the United States.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides an exception to the continuous residence requirement, if a single absence exceeded 45 days, and the aggregate of all absences did not exceed 180 days between January 1, 1982, through the date the application is filed, if the applicant can establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed.

The relevant issue under the regulation is not the fact that the applicant's stay was lengthened by complications, but rather whether the applicant, when leaving the United States, reasonably expected to return within the 45 day time limit, *Ruginsky v. INS*, 942 F.2d 13 (1st Cir. 1991). Here, the applicant has not provided any details about why he left the United States and when he expected to return.

The applicant admits that he was absent for 130 days. He has offered no explanation for the delay in returning to the United States, nor does he submit documentation to explain this absence.

The applicant has not established why his absence lasted 130 days and whether he reasonably expected to return within the 45 day time limit. As a result, the applicant has not resided continuously in the United States throughout the requisite period pursuant to 8 C.F.R. § 245a.15(c)(1). Accordingly, the director's decision to deny the application on this ground will be affirmed.

Based on the above, the applicant has not established entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is not eligible for permanent resident status under Section 1104 of the LIFE Act.

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