**U.S. Department of Homeland Security**
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

**U.S. Citizenship and Immigration Services**

L2

FILE: [redacted] Office: Los Angeles Date: APR 19 2005

IN RE: Applicant: [redacted]

PETITION: 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]

PUBLIC COPY

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.

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 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 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 had failed to submit sufficient evidence of residence in this country for the period from prior to January 1, 1982 to November 29, 1982, the date he entered the United States with a F-1 student visa. The district director further concluded that the applicant maintained lawful F-1 student status in the period from November 29, 1982 to May 31, 1985, the date of the expiration of his period of authorized stay in this country.

On appeal, counsel asserts that the applicant had submitted sufficient evidence of residence in the United States from prior to January 1, 1982 to November 29, 1982, when he entered the United States with a F-1 student visa. Counsel indicates the applicant's entry into this country on November 29, 1982 was not lawful because he was returning to an unlawful residence. Counsel contends that the district director's denial was not specific in detail and, therefore, did not comply with both 8 C.F.R. § 103.3(a)(1)(i) and the holding of a prior non-precedent decision issued by the AAO.

To be eligible for adjustment to permanent resident status under the LIFE Act the applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. 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.
>
> (ii) Nonimmigrants - In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time <u>or</u> that the alien's unlawful status was known to the Government as of such date.

The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988).

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status that was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the

LIFE Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

As cited above, pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, 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 the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. 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) [previously numbered Section 212(a)(19)] of the INA, 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

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 it is sufficient that the proof establish that it 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. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record shows that that the applicant is a class member in a legalization class-action lawsuit who submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA, on May 13, 1991. The applicant also submitted an Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC), in which he claimed that he first entered the United States as an undocumented alien who entered without inspection by crossing the border from Mexico in November 1981. At part #33 of the Form I-687 application, where aliens were asked to list all residences in the United States since their first entry, the applicant listed [redacted] as his residence from November 1981 to September 1982. However, at part #35 of the Form I-687 application, where aliens were asked to list all absences from the United States since entry, the applicant listed one absence from this country when traveled to Edinburgh, Scotland to obtain a F-1 student visa from August 1982 to November 1982. No explanation was provided by the applicant as how he could have maintained an address in the United States until September 1982, while being absent from this country from August 1982 to November 1982.

In support of his claim of unlawful residence in the United States from prior to January 1, 1982, to the date of his admitted absence, beginning in either August 1982 or September 1982, the applicant submitted a letter signed by [redacted] In his letter, dated November 24, 1990, [redacted] indicated that he was the [redacted] and that the applicant had resided at that same address in apartment #2 from November 1981 to September 1982. The applicant included no other evidence to support his claim of residence in this country for this specific period with his filing of the Form I-687 application.

The record contains copies of the applicant's Form I-94, Record of Arrival/Departure, which show that he was issued an F-1 student visa in Edinburgh, Scotland on November 2, 1982. The Form I-94 reflects that the applicant subsequently entered the United States at Chicago, Illinois as an F-1 student attending College in Carbondale, Illinois on November 29, 1982. The applicant was granted a period of authorized stay as an F-1 student until May 31, 1985. The record also contains photocopies of school transcripts from this institution demonstrating that the applicant was enrolled and attending classes beginning with the winter term of 1982-1983 through the completion of the summer term of 1984. At part #36 of the Form I-687 application, where aliens were asked to list all employment in the United States, the applicant indicated that he worked as a gardener and handyman from November 1981 to June 1982, and that he engaged in no further employment in this country until September 1985, when he began working as a cashier. On the Form I-687 application, the applicant indicated that he subsequently violated his F-1 student status by remaining in this country past the expiration of his period of authorized stay on May 31, 1985. The applicant submitted sufficient evidence, including contemporaneous documents, to demonstrate that he unlawfully resided in the United States from June 1, 1985 through May 4, 1988. Therefore, the period of the applicant's residence in this country to be examined in these proceedings is that period from his claim of first entry in November 1981 through May 31, 1985.

The record shows that the applicant subsequently submitted his Form I-485, Application to Adjust Status to Permanent Resident pursuant to the LIFE Act on May 23, 2002. The applicant included a copy of a rental agreement that is signed by him and the individual who signed the affidavit of residence the applicant had previously provided with his Form I-687 application. The rental agreement indicates that the applicant and entered into a month-to-month lease for an unspecified apartment at in California at a rate of $250.00 per month on October 25, 1981. Paragraph #10 of the rental agreement specifies that the lessor shall pay for all water supplied to said premises, and that the lessee, the applicant, shall pay for all gas, heat, light, power, telephone service, and all other services. It is noted that the individual who executed the document apparently transposed and then attempted to alter the day and month on the rental agreement. The applicant included no other new evidence to support his claim of residence in this country for the period from November 1981 to May 31, 1985.

In the notice of intent to deny issued on March 15, 2004, the district director determined that applicant had failed to submit sufficient evidence in support of his claim of unlawful residence since prior to January 1, 1982. Specifically, the district director indicated that the letter signed by did not contain sufficient information and was not corroborated by any additional supporting documents. In addition, the district director determined that the applicant had entered the United States legally with an F-1 student visa in November 1982, and had lawfully resided in this country as a valid F-1 student through the date of the expiration of his period of authorized stay on May 31, 1985 because he failed to establish that he violated the terms of his F-1 student visa in any manner in such period. While the district director also stated that the rental agreement submitted by the applicant was questionable because it had been altered and lacked probative value because it was not an original document, this particular finding cannot be supported because the alteration can be explained as an innocent mistake and the probative value of a document cannot be determined merely on the basis of whether it is an original or a copy. The applicant was granted thirty days to respond to the notice and rebut the stated basis for the intended denial.

In response, the applicant submitted a new affidavit of residence signed by In the new affidavit, stated that he is the owner of a building located at California since 1980 reiterated that he had rented an apartment at this address to the applicant on October 25, 1981 declared that any alteration on the document occurred when it was originally executed and was the result of his mistake in writing the month and day and his attempt to correct such mistake.

The applicant also submitted a copy of Legalization Questionnaire dated March 7, 2000, in which he recounted his attempts to file a legalization application during the initial application period from May 5, 1987 to May 4, 1988, but was told that he did not qualify. However, the questionnaire and the information contained therein relate only to applicant's class membership in one of the requisite legalization class-action lawsuits, and have no bearing on his claim of unlawful residence in the United States in the requisite period.

The district director determined that the applicant had failed to overcome the grounds of denial put forth in the notice of intent to deny, and denied the LIFE Act application on April 15, 2004.

On appeal, counsel contends that the district director's denial was not specific in detail and, therefore, did not comply with either 8 C.F.R. § 103.3(a)(1)(i) or the holding of a prior non-precedent decision issued by the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of the Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary, with concurrence of the Attorney General, are binding on all US Citizenship and Immigration Services employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Clearly, the AAO is not bound to follow the holding of this prior non-precedent decision.

Although counsel is correct in concluding that 8 C.F.R. § 103.3(a)(1)(i) contains general directions for procedures to be followed in the denial of any and all applications and petitions filed under 8 C.F. R. § 103.2, the specific procedure to be followed in denying an application for permanent residence status under the LIFE Act is contained at 8 C.F.R. § 245a.20(a)(2). This regulation states in pertinent part:

> *Denials*. The alien shall be notified in writing of the decision of denial and the reason(s) therefor. When an adverse decision is proposed, the Service [the Immigration and Naturalization Service and now Citizenship and Immigration Services, or CIS] shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision. If inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to the Service, the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information. An applicant affected under this part by an adverse decision is entitled to file an appeal on Form I-290B, Notice of Appeal to the Administrative Appeals Office....

In this case, the district director put forth two distinct grounds as the basis for the proposed denial in the notice of intent to deny issued on March 15, 2004. These grounds were based upon an examination of relevant material submitted by the applicant with the Form I-687 legalization application, as well as the Form I-485 LIFE Act application. The applicant was afforded the opportunity to explain discrepancies, rebut any adverse information, and submit additional documentation in support of his claim of unlawful residence in the United States for the period from November 1981 to May 1, 1985. The district director acknowledged receipt of the applicant's response to the notice of intent to deny and concluded that such response failed to overcome the stated grounds for denial in the notice of decision issued on April 15, 2004. While the director failed to analyze the applicant's response to this notice in detail, this action cannot be determined to be a failure to comply with the specific procedure to be followed in denying an application for permanent residence status under the LIFE Act as contained in 8 C.F.R. § 245a.20(a)(2).

Counsel asserts that the applicant had submitted sufficient evidence of residence in the United States from prior to January 1, 1982 to November 29, 1982, when he entered the United States with a F-1 student visa. As previously discussed, the applicant claimed that he first entered the United States as an undocumented alien who entered without inspection by crossing the border from Mexico in November 1981 on the LULAC determination form. The applicant corroborated his initial date of entry by listing date of his first residence in this country as November 1981 at part #33 of the Form I-687 application. In addition, the applicant listed his first address as

The applicant has only provided three documents, a letter, a rental agreement, and an affidavit, all signed by one individual, to support his claim of residence for the period from prior to January 1, 1982. While specified in his letter that the applicant resided at in apartment #2 in California from November 1982 to September 1982, he listed this address as in his subsequent affidavit. The applicant and have provided three different spellings for the same street despite the fact that laims to own a building located on this street, which both the applicant and he testified was the applicant's place of residence beginning in November 1981. The rental agreement signed by both the applicant and eflects that they entered into a month-to-month lease for an unspecified apartment at California at a rate of $250.00 per month on October 25, 1981. However, no explanation has been offered as to how the applicant and could have entered into this agreement on this date when both parties have provided contradictory testimony that the applicant entered and began his residence in this country in November 1981.

These discrepancies and contradictions bring into question the credibility of applicant's claim of residence in the United States from prior to January 1, 1982 to November 29, 1982, the date he subsequently entered this country with a F-1 student visa. Such conflicts also affect the credibility of the documents provided by the applicant to support his claim of residence for this period, especially in light of the fact that these three supporting documents contain the testimony of only one individual. While paragraph #10 of the rental agreement specifies the applicant was to pay for all gas, heat, light, power, telephone service, and all other services to be provided during the term of the month-to-month lease, he has failed to provide any utility bills for the period he purportedly resided at The record does not contain any independent and contemporaneous evidence to corroborate the applicant's claim of residence in this country from prior to January 1, 1982 to November 29, 1982. Neither counsel nor the applicant has put forth an explanation as to why the record is lacking in such evidence if the applicant had in fact paid for the utilities at the address he claims to have lived.

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).

Given the complete lack of contemporaneous documentation pertaining to this applicant, direct contradictions and conflicts in testimony, and reliance upon supporting documentation with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date of his lawful entry into this country with an F-1 student visa on November 29, 1982.

Counsel indicates the applicant's entry into this country on November 29, 1982 was not lawful because he was returning to an unlawful residence. However, as has been noted, the applicant has failed to submit sufficient credible evidence to establish that he entered and resided in the United States prior to such date.

Therefore, it must concluded that the applicant's entry into this country on November 29, 1982 as an F-1 student was his first, as well as a lawful entry because he was not returning to an unrelinquished and unlawful residence in the United States. Furthermore, it must noted that the applicant has neither claimed nor demonstrated that he violated his F-1 student status from his date of entry to May 31, 1985, the expiration of his period of authorized stay in this country. Consequently, it must be concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from the date of his lawful entry into this country with an F-1 student visa on November 29, 1982 through the date his period of authorized stay expired on May 31, 1985.

An alien applying for adjustment of status has the burden of proving 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 under the provisions of section 245A of the INA, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other 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).

"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.

At part #35 of the Form I-687 application, the applicant listed one absence from this country when traveled to Edinburgh, Scotland from August 1982 to November 1982 to obtain an F-1 student visa. Clearly, such an absence, consisting of a minimum of eighty-nine days and a maximum of one hundred nineteen days, exceeds the forty-five day limit allowed for a single absence from this country in the period between January 1, 1982 and May 4, 1988. While the applicant provided contrary testimony that this admitted absence began in September 1982, such an absence, consisting of a minimum of fifty-nine days and a maximum of eighty-nine days, also exceeds the forty-five day limit allowed for a single absence from the United States in the requisite period. The applicant has claimed that the purpose of his alleged absence was to travel to [redacted] to obtain an F-1 student visa. The record shows that the applicant obtained the F-1 student visa on November 2, 1982 and subsequently entered the United States at Chicago, Illinois on November 29, 1982. The applicant has failed to claim that he experienced any exigent circumstances that delayed his purported return to the United States. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.15(c)(1). Even if the applicant had overcome that basis of the district director's denial relating to his failure to establish continuous unlawful residence in the United States from prior to January 1, 1982 to November 29, 1982, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given the fact that the applicant has acknowledged exceeding the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, he has failed to establish having resided in continuous unlawful status in the United States for such period 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 on this basis as well.

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