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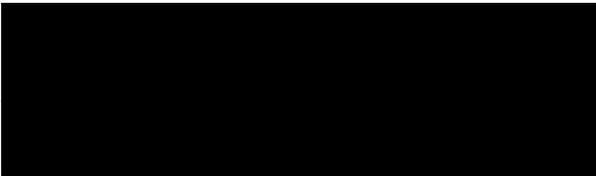
FILE:  Office: Los Angeles

Date: AUG 30 2005

IN RE: Applicant: 

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:



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 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 June 26, 1982, the date he entered the United States with a B-2 visitor's visa.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish that he continuously resided in an unlawful status in the United States prior to January 1, 1982. Counsel contends that the applicant's absences during the requisite period were brief, casual, and innocent and did not interrupt his continuous physical presence in this country.

An applicant for permanent resident status under the LIFE Act 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. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

"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.

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. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on October 10, 1996. At part #35 of the Form I-687 application where applicants were asked to list all absences from the United States beginning from January 1, 1982, the applicant indicated that he had been absent from this country, 1) from May 1982 to July 1982, when he traveled to Bangladesh to visit family, 2) from April 14, 1986 to April 15, 1986, when he traveled to Canada to obtain a visa, and 3) from June 1986 to September 1986, when he traveled to Bangladesh to visit family. On the "Form for Determination of Class Membership in *CSS v. Meese*" that was included with the Form I-687 application, the

applicant listed the same absences noted in the Form I-687 application and indicated that he returned to this country in 1982 with a B-2 visitor's visa. The applicant also submitted a Form I-690, Application for Waiver of Grounds of Inadmissibility, to overcome any ground of inadmissibility arising from his misrepresentation in fraudulently procuring the B-2 visitor's visa utilized to re-enter the United States upon his return from Bangladesh in 1982.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on May 3, 2002.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an employment letter, affidavits of residence, Social Security statements, documents from the California Department of Motor Vehicles, Service documents, tax documents, correspondence from Bank of America, eight checks, a credit report, an award certificate, and photocopied pages from his passport.

On June 9, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his LIFE Act application. Specifically, the district director stated that although the applicant had claimed entry into the United States before January 1, 1982, he had failed to submit either direct or circumstantial evidence of such an entry. While the district director indicated that the record showed the applicant entered this country with a B-2 visitor's visa on June 20, 1982, the evidence clearly demonstrates that he entered on June 26, 1982. The district director declared that the applicant had made statements in two separate letters dated November 21, 1991 and January 10, 1995, respectively, indicating that he began residing in this country in June and July of 1982.

However, the determination that the applicant failed to provide evidence to support his claim of residence in this country prior to January 1, 1982 is erroneous. The applicant has consistently claimed that he entered the United States in January 1981. The record contains correspondence from the Bank of America and the California Department of Motor Vehicles that tends to corroborate the applicant's claim of residence in this country before January 1, 1982. The applicant testified that he subsequently departed the United States to visit family in Bangladesh in May 1982, and the evidence in the record establishes that he re-entered the country to return to his unlawful residence with a B-2 visitor's visa on June 26, 1982. Although the applicant references this entry in the letters cited in the previous paragraph, it cannot be concluded that his statements definitively establish that this was his first entry into the United States. Furthermore, the record contains additional evidence to support the applicant's claim of residence in this country through May 4, 1988. Therefore, the applicant must be considered to have overcome the reason for denial as stated by district director.

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 admitted he had absent from this country when traveled to Bangladesh to visit family from June 1986 to September 1986. Clearly, such an absence, consisting of a minimum of sixty-two days and a maximum of one hundred twenty 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. The applicant has claimed that the purpose of his absence was to visit family in Bangladesh. The applicant has failed to claim that he experienced any exigent circumstances that delayed his return to the United States. Therefore, any 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).

On appeal, counsel asserts that the applicant's absences during the requisite period were brief, casual, and innocent and did not interrupt his continuous physical presence in this country.

An applicant for permanent resident status must establish continuous physical presence in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988. *See* 8 C.F.R. § 245a.11(c).

The regulation at 8 C.F.R. § 245a.16(b) 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.

Counsel is correct in concluding that a brief, casual, and innocent departure by the applicant from the United States in the period from November 6, 1986 to May 4, 1988 would not interrupt his continuous physical presence in this country. However, the applicant's continuous physical presence in this country is not at issue in these proceeding as his absence occurred from June 1986 to September 1986. At issue is the applicant's absence in the context of his continuous residence in this country from prior to January 1, 1982 to May 4, 1988, and the fact that this absence exceeded the forty-five day limit for a single absence set forth in 8 C.F.R. § 245a.15(c)(1). Even if the applicant's absence of a minimum of sixty-two days and maximum of one hundred twenty days from June 1986 to September 1986 was determined to be brief, casual, and innocent for the purpose of establishing continuous physical presence in this country, such determination would have no impact on the finding he did not continuously reside in the United States in the period from prior to January 1, 1982 to May 4, 1988 because his absence exceeded the forty five day limit for a single absence.

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.