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

U.S. Citizenship and Immigration Services

[redacted]

L2

FILE: [redacted] Office: Houston Date: SEP 30 2005

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. 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, Houston, Texas, 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 demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant declares that he could not recall making any statement indicating that he had been absent from the United States in the period from November or December of 1987 to February 1988 to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) officer who conducted his interview on October 31, 2002.

An applicant for permanent resident status 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 or about December 13, 1991. 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 listed one absence from this country when he traveled to Mexico to visit relatives in February 1988. In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted six affidavits and three postmarked envelopes. While the applicant submitted additional

documentation in support of his claim of residence in the United States, such documentation is not relevant evidence in these proceedings in that it is either related to the period after May 4, 1988 or contains no identifying information to establish a link to the applicant.

The record shows that the applicant appeared for an interview at the Service's Houston, Texas District Office on January 8, 1992. The interviewing officer's notes reflect that during the course of this interview, the applicant testified under oath that he had been absent from the United States when he was married in Mexico in 1983. The applicant further testified that he traveled to Mexico for vacation in November or December of 1987 and did not return to the United States until February of 1987. In addition, the record contains a statement that was signed by the applicant at his interview in which he admitted that he had been absent from the United States when he was married in Mexico in 1983, and then again when he traveled to Mexico to visit family from November or December of 1987 to February of 1988. The record contains no indication that the applicant offered any explanation as to why these absences from the United States were not listed on the Form I-687 application.

The applicant seriously diminished his credibility by admitting that he had been absent from the United States on two different occasions during the requisite period and such absences were not listed on his Form I-687 application. Furthermore, the applicant's absence from this country from November or December of 1987 to February of 1988 exceeded the 45 day limit for a single absence between January 1, 1982, and May 4, 1988 as set forth in 8 C.F.R. § 245a.15(c)(1).

The applicant subsequently filed his Form I-485 LIFE Act application on September 17, 2001. With the Form I-485 LIFE Act application, the applicant included a Form G-325A, Record of Biographic Information, in which he specified that he had been married in Mexico June 4, 1983. The applicant also provided nine additional affidavits of in support of his claim of residence in the requisite period.

On May 10, 2004, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Specifically, the district director stated that the applicant had appeared for an interview relating to his LIFE Act application on October 31, 2003. The district director declared: "During the interview you informed the Service officer under oath verbally, that you visited Mexico in November or December of 1987 and returned approximately February of 1988." However, while the record indicates that the applicant was interviewed regarding his LIFE Act application on October 31, 2003, the record does not contain a contemporaneous first-hand account of the interview (such as the interviewing officer's notes) reflecting any testimony provided by him on this date. The record does not contain any evidence to demonstrate that the applicant made any admissions relating to his absences from this country during the requisite period at his interview on October 31, 2003. Nevertheless, as discussed above, the record does contain the interviewing officer's notes from January 8, 1992 that reflect that the applicant testified that admitted that he had been absent from the United States when he was married in Mexico in 1983, and then again when he traveled to Mexico for a vacation from November or December of 1987 to February of 1988. Further, the applicant provided a signed statement in which he reiterated his admissions regarding his absences from this country in the requisite period.

Both in response to the notice of intent to deny and on appeal, the applicant contends that he could recall stating that he had been absent from the United States for only a short period in February of 1988 at the interview on October 31, 2003. As acknowledged in the previous paragraph, the record contains no indication that the applicant made any statements regarding his absences from this country during the requisite period at

his interview on October 31, 2003. Rather, the record shows that the applicant admitted that he had been absent from the United States when he was married in Mexico in 1983, and then again when he traveled to Mexico for a vacation from November or December of 1987 to February of 1988 in both his sworn testimony and a separate signed statement that he provided at his interview on January 8, 1992. The applicant's statements in his response to the notice of intent to deny and on appeal cannot be viewed as compelling enough to ignore his prior admission that he exceeded the 45 day limit for a single absence when he traveled to Mexico from November or December of 1987 to February of 1988.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I. & N. Dec. 213 (BIA 1965).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

The applicant has acknowledged that he exceeded the 45 day limit for a single absence from this country when departed the United States to travel to Mexico from November or December of 1987 to February of 1988. The applicant has also admitted to another absence of undetermined duration when he traveled to Mexico to be married in 1983. The applicant has failed to establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, 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.

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