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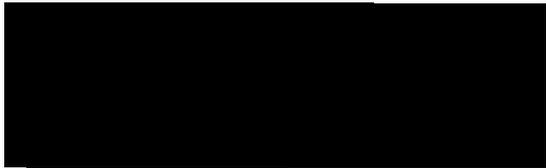
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HOUSTON Date: **MAY 23 2006**
MSC 02 138 63132

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. Any further inquiry must be made to that office.


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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director concluded that the applicant had exceeded the forty-five (45) day limit for a single absence, as well as the aggregate limit of one hundred and eighty (180) days for total absences from the United States. Accordingly, the director denied the application.

On appeal, counsel asserts that the applicant had informed the interviewing officer that he could not remember the exact dates of his absences during the requisite period “unless he confirmed by reviewing the applications and with family and other sources.” Counsel states that the applicant’s absences were brief, casual and innocent. Counsel submits copies of documents previously submitted along with additional documents in support of the appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Section 1104(c)(2)(B)(i) of the LIFE Act reads as follows:

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 that were most recently in effect before the date of the enactment of this Act shall apply.

“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.

On his Form I-687, Application for Status as Temporary Resident signed on August 26, 1994, the applicant listed his departures and returns to the United States during the requisite period as follows:

May 1, 1984 to May 25, 1984 to Mexico to visit family.
March 5, 1985 to March 20, 1985 to Mexico for vacation
December 18, 1987 to January 6, 1988 to visit family

At the time of his LIFE interview on May 8, 2003, the applicant was placed under oath and admitted in a sworn statement that in September 1984, he returned to Mexico and remained there for three months before returning to the United States in December 1984. In a separate signed statement, the applicant listed each departure and return to the United States as follows:

September 1984 to December 1984 for three months to visit family in Mexico.
November 1985 to January 1986 for two months to visit family in Mexico.
For two months in either 1986 or 1987 for two months to visit family in Mexico.
November 1987 to January 1988 for two months to visit family in Mexico.

The director, in his Notice of Intent to Deny dated June 6, 2003, informed the applicant that each absence from the United States exceeded the 45-day limit for a single absence, as well as the aggregate limit of 180 days for total absences from the United States during the requisite period. The applicant was also informed that no evidence was provided to establish that his prolonged absences from the United States were due to emergent reasons. The applicant, in response, recanted his previous sworn statement and stated in part:

I told the officer that I was not exactly sure about the exact dates because I came to the United States in 1981 when I was 13 years old and those absence had been in the 1980's. I tried to remember the estimated dates.

I told the officer about my three absences and the officer kept asking me if those were exact dated and I respond that they were not because I was not sure. I asked if he needed exact dates and he responded that I just needed to tell him what I remembered. I told the officer that I could not remember and the officer kept pressuring me to admit that the absences were for two or more months. I concluded that I needed to call my family to confirm the exact dates that I had those absences if he wanted me to. He said it was not necessary.

I have had to contact my family in Mexico and also my family and employers here in the United States to confirm the exact dates that I traveled to Mexico during the 1980's.

* * *

I first traveled to Mexico on May 1, 1984 and came back on May 25, 1984. I went to visit my sick mother and to celebrate her birthday which is on May 12th.

I traveled to Mexico for the second time on March 5, 1985 and came back on March 20, 1985. I went to visit my parents.

I traveled to Mexico for the third time on December 18, 1987 and came back on January 6, 1987 I went to visit my parents.

I am positive about my three absences.

I never stayed out for more than 1 ½ to 2 weeks. And I was only absence from the United States three times between 1981 and 1988.

As evidence to support his statement and continuous residence in the United States, the applicant submitted the following:

- A letter from the applicant's parents of Guanajuato, Mexico, who attested to their son's visits on or about May 4 through May 20, 1984, during the middle of March 1985 for approximately a week and a half, and Christmas of 1987 for approximately two weeks.
- A notarized affidavit from his brother-in-law, [REDACTED] who attested to the applicant's visits to Mexico in May 1984 for two weeks, in March 1985 for one and one half weeks, and in December 1987 for two weeks. [REDACTED] indicated that the applicant resided with him and his wife in Houston, Texas from June 1981 to 1991, and was employed in his landscaping business

from 1981 to December 1986. [REDACTED] also indicated that the applicant did not attend school in the United States.

- A notarized affidavit from his sister, [REDACTED] who attested to the applicant's visit to Mexico in May 1984 for approximately one and a half weeks, in March 1985 for two weeks, and in December 1987 for approximately one and a half weeks. [REDACTED] indicated that the applicant resided with her and her husband in Houston, Texas from 1981 to 1999, and was employed in her husband's landscaping business from 1981 to 1986. [REDACTED] also indicated that the applicant did not attend school in the United States.
- A notarized affidavit from [REDACTED] owner of Crown Paint and Body Shop in Houston, Texas, who indicated that the applicant was in his employ from November 1987 to September 1999. [REDACTED] also indicated that the applicant went to Mexico in December 1987 for the holidays and returned the first week of January 1988.
- A letter from his sister [REDACTED] of Guanajuato, Mexico, who attested to the applicant's visits to Mexico on or about May 4 through May 20, 1984, during the middle of March 1985 for approximately a week and a half, and Christmas of 1987 for approximately two weeks.
- A letter from his brother, [REDACTED] of Guanajuato, Mexico, who attested to the applicant's visit to Mexico from March 8, 1985 to March 17, 1985.
- A notarized letter from [REDACTED] who indicated that the applicant, along with [REDACTED] and [REDACTED], resided with her in her home at [REDACTED] Magnolia, Texas from June 1981 to October 1983.

The applicant also submitted several copies of photographs of himself that he claimed were taken during the requisite period. The photographs, however, have no identifying evidence that could be extracted which would serve to either prove or imply that photograph was taken in the United States during the requisite period.

A review of the Form for Determination of Class Membership dated by the applicant on August 26, 1994, indicated that he departed the United States on December 18, 1987 and returned on January 6, 1988. In addition, at the time of his initial interview on October 13, 1994, the applicant once again indicated on a Form for Determination of Class Membership that he departed the United States in December 1987 and returned in January 1988. These documents coupled with [REDACTED] affidavit and his initial claim on his Form I-687 application support the applicant's statement that his absence in 1987 did not exceed 45 days.

The fact that the applicant's other absences do not correspond with his departures claimed on his Form I-687 application impairs his credibility. *If* the applicant could not remember the dates of his departures from the United States it is unclear why he gave specific dates and reinforced the dates by signing an additional statement. The applicant's family members must be viewed as having a self-evident interest in the outcome of proceedings, rather than as independent, objective and disinterested parties.

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's continued stay in Mexico would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. While the aggregate of all absences has not exceeded 180 days, his departures in 1984 and 1985 exceeded the 45-day period allowable for a single absence, and were not "due to emergent reasons" outside of his control that prevented him from returning far sooner.

Accordingly, the applicant's three-month stay in 1984 and his two-month stay in 1985 to 1986 interrupted his "continuous residence" in the United States. The applicant has, therefore, failed to establish that he resided in the United States in an unlawful status continuously 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 regulation, 8 C.F.R. §§ 245a.11(b) and 245a.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.