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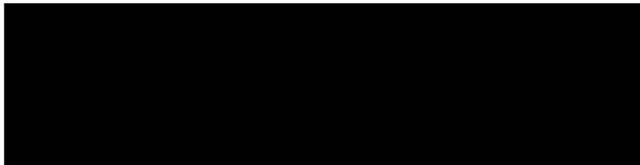
Office: NEW YORK

Date: JUL 21 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 District Director (director) in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he maintained continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant's departure from the United States from October 1984 through April 1985, was due to a family emergency and that his so-called absence in 1987 to 1988 was not an absence at all. In counsel's view, therefore, the applicant's continuous residence in the United States was not interrupted.

To be eligible for adjustment to permanent resident status under the LIFE Act an applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and continuous physical presence in the United States from November 6, 1986 through May 4, 1988. *See* section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

"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 its amenability to verification. *See* 8 C.F.R. § 245a.12(e).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more

likely than not,” the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant, a native and citizen of Ecuador, filed his application for permanent resident status under the LIFE Act (Form I-485) on June 13, 2003.

In a Notice of Intent to Deny (NOID), issued on September 15, 2006, the director cited the applicant’s testimony at his LIFE legalization interview on May 25, 2004, that he entered the United States by crossing the United States Mexico border without inspection in November 1981, and continuously resided in the United States until October 1984, when he returned to his native country of Ecuador. The applicant re-entered the United States in April 1985, using the same route and manner as his initial entry in 1981. The applicant subsequently left the United States a second time in January 1987 to Ecuador and re-entered the United States in April 1988. The director concluded that these absences from the United States interrupted the applicant’s “continuous residence” in the United States during the statutory period of January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence that he fulfilled the continuous residence requirement for legalization under the LIFE Act.

On October 12, 2006, the applicant, though his counsel, submitted a personal affidavit and other evidence in response to the director’s NOID. In his affidavit, the applicant stated that he left the United States in October 1984 because his wife was not feeling well, remained in Ecuador to make sure his wife was alright, and helped his wife take care of their newborn child before returning to the United States. The applicant also stated that he left the United States a second time when he was hired as a merchant marine, that he traveled to Central America and the United States, and that he resigned his position when his ship landed in Galveston, Texas. The applicant asserted that his two departures from the United States in 1984 and 1987, were for “emergency reasons” and did not break his continuous residence in the United States.

On January 10, 2007, the director denied the application, finding that the applicant failed to establish that his departures from the United States were for emergent reasons because the applicant had prior knowledge of the circumstances. The director determined that the applicant failed to fulfill the continuous residence requirement for legalization under the LIFE Act.

On appeal, counsel for the applicant asserts that the director erred by concluding that the applicant's absences from the United States interrupted his continuous residence. Counsel claims that the applicant had emergent reasons for leaving the United States in 1984 because his wife in Ecuador had postpartum problems and the applicant had to travel to Ecuador to take care of his child while his wife was in the hospital. Further, counsel asserts that the merchant marine service did not involve the applicant leaving the United States. Counsel claims that the applicant was on a ship working in the United States and the surrounding areas throughout that period.

Counsel's assertions on Form I-290B contradict other evidence in the file as well as the applicant's own affidavit. Counsel's assertion that the applicant was taking care of his child in his 1984 trip to Ecuador while his wife was in the hospital is contrary to the medical record of the applicant's spouse in the file. According to the medical record, the applicant's wife was hospitalized from June 16, 1984 to July 15, 1984. The applicant traveled to Ecuador in October 1984. Also, the applicant, in his affidavit dated October 5, 2006, did not claim that the reason for his trip in 1984 was that his wife was hospitalized and he had to care for their child. While counsel asserts that the applicant's merchant marine service from January 1987 to April 1988 did not take him outside of the United States, the applicant stated in his affidavit that his service in the merchant marine involved travel to Central America. The applicant did not indicate what periods he was away from the United States during that 15-month period, or that he maintained any residence in the United States during that time.

It is undisputed that the applicant's six-month absence from the United States - extending from October 1984 to April 1985 - far exceeded the 45-day maximum prescribed in the regulation at 8 C.F.R. § 245a.15(c)(1). In addition, the applicant left the United States a second time from January 1987 to April 1988 - a period of 15 months - which likewise far exceeded the 45-day period, as well as the 180-day aggregate absence maximum, prescribed in the regulation. Absences of such duration interrupt an alien's continuous residence in the United States unless (s)he can show that a timely return to the United States could not be accomplished due to emergent reasons. While the term "emergent reasons" is not defined in the regulations, there is some pertinent case law. In *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), the Board of Immigration Appeals held that *emergent* means "coming unexpectedly into being."

The applicant claimed that he first left the United States for Ecuador sometime in October 1984 to take care of his spouse who was not "feeling well." The applicant claimed that while in Ecuador, he helped his wife take care of their son and that he came back to the United States sometime in April 1985. The applicant submitted his wife's medical record from Ecuador as evidence of his wife's illness. According to the record, the applicant's wife was admitted to the hospital on June 16, 1984 and discharged on July 15, 1984. She was given a 30-day rest upon

discharge, which extended her recovery period to August 15, 1984. The applicant did not travel to Ecuador until October 1984, three months after his wife was discharged from the hospital. The applicant has not provided a detailed description of his wife's condition, why it lasted so long, and why he could not have returned to the United States within 45 days. Nor have any medical records or other documentation been submitted for the six-month period the applicant was in Ecuador.

According to the applicant's own statement, the merchant marine service involved extended periods of time outside the United States. The applicant has submitted no detailed information or documentation about when and where he traveled during his merchant marine service. Nor has he explained what sort of "emergent reasons" prevented his return to the United States from that service within 45-days.

Based on the evidence in the record, the AAO concludes that the applicant has failed to establish that emergent reasons, within the meaning of 8 C.F.R. § 245a.15(c)(1), prevented his return to the United States from Ecuador in 1984 within the 45-day period allowed in the regulation. Nor has the applicant established that his services while in the merchant marine in 1987 to 1988 did not involve absences from the United States that exceeded the 45-day single absence maximum and 180-day aggregate absence maximum prescribed in the regulation, or that "emergent reasons" prevented a timely return (or returns) to the United States.

Thus, the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

The appeal will be dismissed, and the application denied.

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