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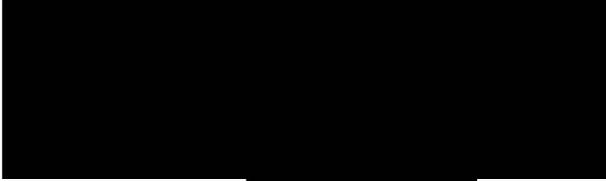
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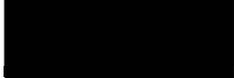
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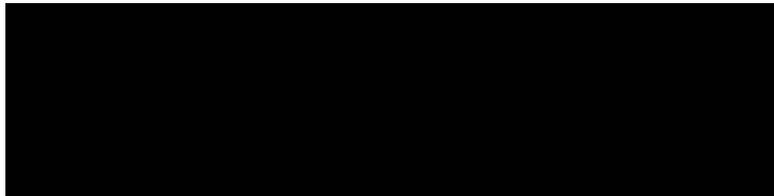
Office: Los Angeles

Date: FEB 13 2008

MSC 02 073 61332

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Los Angeles, California, and is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that he resided in the United States in a continuous unlawful status for the entire period from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The district director also determined that the applicant admitted that he had been absent from this country in excess of the forty-five day limit for a single absence set forth in 8 C.F.R. § 245a.15(c)(1) when he traveled to Mexico to see his sick mother in 1987. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application.

On appeal, the applicant reiterates his claim of continuous residence in this country for the requisite period and claims that he has submitted evidence in support of such claim. The applicant asserts that he should not be held responsible for the error that was made by the preparer of the affidavit signed by [REDACTED] relating to his absence from the United States in 1987. The applicant also requested that he be provided with a one hundred twenty day extension to submit additional material in support of his appeal. However, as of the date of this decision more than three years after filing his appeal, the applicant has failed to submit a statement, brief, or evidence to supplement his appeal. Therefore, the record must be considered complete.

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. Section 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 under the provisions of section 212(a) of the Immigration and Nationality Act (Act), 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).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982 to May 4, 1988, the submission of any other relevant document including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 "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 petitioner 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 or petitioner 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 or petition.

The first issue to be examined in this proceeding is whether the applicant's absence from the United States in 1987 exceeded the forty-five day limit for a single absence set forth in 8 C.F.R. § 245a.15(c)(1).

The applicant made a claim to class membership 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 Act on August 2, 1990. 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 an absence from this country from August 4, 1987 to September 20, 1987 and indicated he traveled to Mexico because his mother was very sick.

With the Form I-687 application, the applicant included a "Form for Determination of Class Membership in *CSS v. Meese*" in which he testified that he departed the United States to travel

to Mexico by car on August 4, 1987 because his mother was very sick and subsequently reentered this country without inspection by walking across the border on September 20, 1987.

The applicant submitted an affidavit that is dated July 21, 1990 and signed by [REDACTED]. Mr. [REDACTED] stated that applicant had received a phone call from his father informing him that his mother was very sick. [REDACTED] declared that he gave the applicant a ride from Los Angeles, California to Tijuana, Mexico on August 4, 1987. [REDACTED] noted that the applicant then traveled by bus to Leon, Mexico and subsequently returned to this country on September 20, 1987.

The applicant's own testimony on the Form I-687 application and the class membership determination form reflected that he was absent from the United States for forty-seven days from August 4, 1987 to September 20, 1987 and, therefore such absence exceeded the forty-five day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The applicant's testimony relating to the length of this absence is corroborated by the testimony contained in the affidavit signed by [REDACTED]. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because his absence exceeded the forty-five day limit for a single absence.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application on December 12, 2001. The applicant included a separate attachment to the Form I-485 LIFE Act application in which he amended his prior testimony and now claimed he was only absent from the United States in 1987 for thirty-two days from October 19, 1987 to November 20, 1987. However, the applicant impaired his credibility by offering conflicting testimony relating to the length and dates of his absence from the United States in 1987. The applicant failed to offer any explanation as to why he had contradicted his prior testimony regarding the length and dates of this absence on both the Form I-687 application and the determination form by submitting an amended claim relating to this absence with the Form I-485 LIFE Act application. While the applicant had previously provided a corroborative affidavit from [REDACTED] a to support his prior testimony that he was absent from this country was forty-seven days from August 4, 1987 to September 20, 1987, he failed to submit any independent evidence to substantiate his subsequent amended claim that the length of this absence was thirty-two days and such absence occurred from October 19, 1987 to November 20, 1987.

On October 18, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application in part because testimony contained in the Form I-687 application, the determination form, and the affidavit of [REDACTED] established that the applicant had exceeded the forty-five day limit for a single absence from the United States during the requisite period when he traveled to Mexico in 1987. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which reiterated his claim that he was only absent from the United States in 1987 for thirty-two days from October 19, 1987 to November 20, 1987. The applicant stated that the testimony in the affidavit signed by [REDACTED] relating to the length and dates of his absence from this country in 1987 were the result of errors made when the affidavit was t ed. The applicant claimed that he was unable to obtain further documentation from [REDACTED] because he had passed away. The applicant indicated that he was including two affidavits from individuals with knowledge of his absence from this country in 1987, including his partner, [REDACTED] who was the mother of his four children. Nevertheless, the applicant failed to put forth any explanation as to why not only [REDACTED], but he himself had previously testified that his absence was forty-seven days from August 4, 1987 to September 20, 1987 on both the Form I-687 application and the determination form. Consequently, the applicant's claim that errors were made relating to the dates and length of his absence in the preparation of the affidavit signed by [REDACTED] cannot be considered as credible in light of the fact that the applicant also testified within two different documents that he had been absent from the United States for forty-seven days from August 4, 1987 to September 20, 1987.

The applicant included an affidavit that was signed by [REDACTED]. Ms. [REDACTED] testified as to the applicant's absence by declaring that he had been physically present and continuously residing in Los Angeles, California since December 1981 with the exception of an absence in 1987 of about thirty-one days. [REDACTED] indicated that her knowledge relating to the applicant's residence and absence were derived from the fact that she and the applicant visited each other very often and remained in constant communication. However, [REDACTED] testimony relating to the applicant's absence in 1987 must be considered to be of limited value in that she failed to provide the exact dates of this absence and merely offered an estimate of the length of the absence.

The applicant provided an affidavit that was signed by [REDACTED] a. Ms. [REDACTED] stated that she met the applicant at the beginning of 1983, starting dating, and then began living with the applicant in December 1983. [REDACTED] declared that she and the applicant had been living together since such date through November 6, 2004, the date the affidavit was executed. As to the applicant's absence from this country in 1987, [REDACTED] noted that because she had lived with the applicant for this entire period she was able to certify that he traveled to see his ill mother in Leon, Mexico on October 19, 1987 and returned to this country on November 20, 1987. However, [REDACTED] has acknowledged that she and the applicant have been living together since December 1983 and the applicant has testified that [REDACTED] is the mother of his four children. Therefore, [REDACTED]'s testimony is limited in probative value as she is the applicant's partner and mother of his children and must be considered a party with a direct and substantial interest in the outcome of these proceedings rather than a disinterested and independent witness.

The district director determined that the applicant's testimony in the Form I-687 application and determination form, as well as the testimony of [REDACTED] established that the applicant had exceeded the forty-five day limit for a single absence from the United States during the requisite

period when he traveled to Mexico in 1987. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application on November 10, 2004.

On appeal, the applicant repeats his claim that the preparer of the affidavit signed by [REDACTED] erroneously listed the length and dates of his absence from this country in 1987. The applicant asserts that he held should be held responsible for the error that was made by the preparer of the affidavit signed by [REDACTED] relating to his absence from the United States in 1987. However, the fact that the applicant himself testified in both the Form I-687 application and the determination form that he had been absent from the United States for forty-seven days from August 4, 1987 to September 20, 1987 negates the credibility of the applicant's explanation. Moreover, the simple fact that the testimony in the Form I-687 application, the class membership determination form, and the corroborative affidavit signed by [REDACTED] relating to the length and dates of this absence was provided within the relatively short period of three years after the absence tends to render such testimony more reliable than testimony provided approximately fourteen years after the absence occurred.

As such, it must be concluded that the applicant's admitted absence from the United States from August 4, 1987 to September 20, 1987 exceeded the forty-five day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The applicant failed to assert that his return to this country was delayed by an emergent reason. Consequently, the applicant cannot be considered to have continuously resided in the United States for the requisite period pursuant to 8 C.F.R. § 245a.11(b), because forty-seven day absence exceeded the forty-five day limit for a single absence. 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.

The next issue to be examined is whether the applicant has submitted sufficient credible evidence to 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. Here, the submitted evidence is not relevant, probative, and credible as it relates to the applicant's residence from prior to January 1, 1982 up through 1984. The record contains evidence that tends to corroborate the applicant's claim of continuous residence after 1984 with the exception of his forty-seven day absence from this country in 1987 as has been previously discussed.

As noted above, the applicant submitted the Form I-687 application on August 2, 1990. At part #4 of the Form I-687 application where applicants were asked to list other names used or known by, the applicant listed "[REDACTED]" as the only other name he had used or was known by. With the Form I-485 LIFE Act application, the applicant included his own affidavit in which he claimed that in 1983 and 1984 he had also used and worked under the name "[REDACTED]" in addition to the previously claimed "[REDACTED]". However, the applicant failed to provide

any explanation as to why he did not list the name “ [REDACTED] ” at part #4 of the Form I-687 application where applicants were asked to list other names used or known by.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

The applicant submitted an original Form W-2, Wage and Tax Statement, a photocopied Form 1040A, US Individual Income Tax Return, and a letter dated September 15, 1986 from the California Franchise Tax Board, all of which are for the 1984 tax year and bear the name [REDACTED].” However, the record does not contain any independent evidence or testimony containing the corroborating details required by 8 C.F.R. § 245.2(d)(2)(ii) to substantiate the claim that the applicant used either the name “ [REDACTED] ” or the name “ [REDACTED] ” during the requisite period. The applicant has failed to meet his burden of proving that he was in fact the person who used these names pursuant to 8 C.F.R. § 245.2(d)(2)(ii).

It must be noted that at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since the date of their first entry, the applicant listed [REDACTED] ” in Los Angeles, California from December 1981 to June 1983 and [REDACTED] ” in Los Angeles, California from June 1983 until the date the Form I-687 application was submitted on August 2, 1990.

In support of his claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit that was signed by [REDACTED] Mr. [REDACTED] stated that applicant resided for three weeks in his house at [REDACTED] in Huntington, California after coming to this country in December 1981. However, the applicant failed to list this address as an address of residence at part #33 of the Form I-687 application. Neither the applicant nor [REDACTED] advanced any explanation as to why the applicant had omitted this address from the Form I-687 application if he had resided there as claimed.

The applicant provided an affidavit signed by [REDACTED] who stated that he had personal knowledge the applicant resided in the United States since March 1982 because the applicant would visit his girlfriend at her home and she was [REDACTED] neighbor. [REDACTED] noted that the

applicant subsequently married his girlfriend and that they continued to live at this same address. However, [REDACTED]'s testimony that the applicant and his girlfriend married did not correspond to the testimony of the applicant and his partner as both parties indicated that they remained unmarried partners up through the present. In addition, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up through March 1982.

The applicant submitted an affidavit signed by [REDACTED] who declared that he had personal knowledge that the applicant lived in Los Angeles, California since 1983 when he met the applicant at his work place. Nevertheless, [REDACTED] failed to attest to the applicant's residence in the United States since prior to January 1, 1982 up through that date he purportedly met the applicant in 1983.

The applicant included an affidavit that was dated July 21, 1990 and signed by [REDACTED]. [REDACTED] listed his address as [REDACTED] in Los Angeles, California and stated that he had personal knowledge that the applicant resided in Los Angeles, California since December 1981 as the applicant had lived with him at an unspecified address in Los Angeles from December 15, 1981 to December 1983. However, other than providing the general locale of the applicant's residence during the requisite period, [REDACTED] failed to provide any specific and verifiable testimony to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. As noted previously, the applicant listed "[REDACTED]" in Los Angeles, California as his residence in this country from December 1981 to June 1983. [REDACTED] testimony that the applicant lived with him from December 15, 1981 to December 1983 conflicted with the period of residence listed by the applicant.

The applicant provided another affidavit signed by [REDACTED] that was dated December 1, 2001. Mr. [REDACTED] amended his prior testimony by declaring that the applicant first lived with his cousin Francisco when he arrived in California in December 1981 up until February 1983. Mr. [REDACTED] noted that the applicant came to live with him at "[REDACTED]," in Los Angeles, California in February 1982 but failed to specify any purported date he subsequently moved out. Regardless, the address provided by [REDACTED] did not match that address of residence, "[REDACTED]" listed by the applicant at part #33 of the Form I-687 application. Further, [REDACTED] failed to offer any explanation as to why he had contradicted his prior testimony as to the dates the applicant had lived with him.

The applicant submitted an affidavit that was signed by [REDACTED] Mr. [REDACTED] declared that he was the applicant's cousin and had personal knowledge that the applicant lived in Los Angeles, California since December 1981 because they were always in contact and visited each other frequently. However, the probative value of this affidavit is diminished by the fact that Mr. [REDACTED] acknowledged that he is the applicant's cousin and must be viewed as a family member with an interest in the outcome of these proceedings rather than a detached and independent witness.

The applicant included two affidavits that were signed by [REDACTED] and [REDACTED] respectively. Both affiants stated that they first met the applicant on an unspecified date in 1982 at the home of their mutual friend [REDACTED] at [REDACTED] in Los Angeles, California. The affiants asserted that they remained friends with the applicant and stayed in constant communication with each other since. Nevertheless, neither affiant attested to the applicant's residence in the United States prior to January 1, 1982 up through that unspecified date they purportedly met the applicant in 1982. In addition, neither affiant provided any direct and verifiable testimony to substantiate the applicant's claim of residence in this country after that unspecified date they met the applicant in 1982.

On October 18, 2004, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application in part because he failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 up through 1984. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he reiterated his claim that he continuously resided in the United States since December 1981.

The applicant included an affidavit that was signed by [REDACTED]. Ms. [REDACTED] testified that the applicant had been physically present and continuously residing in Los Angeles, California since December 1981. Ms. [REDACTED] indicated that her knowledge relating to the applicant's residence was derived from the fact that she was married to the applicant's uncle, [REDACTED]. [REDACTED] declared that the applicant came to live with her and her husband at [REDACTED] in Los Angeles, California in February 1982 and subsequently moved out in 1983. [REDACTED] indicated that she and the applicant visited each other very often and subsequently remained in constant communication. Nevertheless, the address provided by Ms. [REDACTED] did not match that address of residence, "[REDACTED]" listed by the applicant at part #33 of the Form I-687 application. In addition, [REDACTED] failed to provide any specific and verifiable testimony relating to the applicant's residence after he purportedly moved from her residence in 1983 up through 1984.

The applicant provided an affidavit signed by [REDACTED] who stated that she met the applicant at the beginning of 1983, starting dating, and then began living with him in December 1983. Ms. [REDACTED] declared that she and the applicant had been living together in this country in an unmarried status since such date through November 6, 2004 the date the affidavit was executed. However, [REDACTED] failed to attest to the applicant's residence in the United States since prior to January 1, 1982 through the date she first met the applicant in the beginning of 1983.

The applicant submitted an affidavit that was signed by [REDACTED]. Ms. [REDACTED] noted that she had known the applicant since he was a child because she and the applicant were natives of Leon, Mexico who had lived in the same neighborhood. [REDACTED] stated that she entered the United States in 1975 and immediately learned that the applicant had come to this country upon his arrival in December 1981. [REDACTED] testified that the applicant lived with his uncle for a

short time before moving in with her son-in-law, Nicasio at his home at “ [REDACTED] ” in Los Angeles, California. [REDACTED] indicated that she possessed such knowledge because she was also living at this same address during this period. [REDACTED] declared that she and the applicant subsequently remained in constant communication with frequent visits and gatherings at family reunions. However, [REDACTED] testimony that the applicant lived at [REDACTED] [REDACTED] conflicted with the applicant’s testimony that he resided at [REDACTED] ” at part #33 of the Form I-687 application.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status since prior to January 1, 1982 up to 1984. The district director concluded that the applicant was not eligible to adjust to permanent residence under section 1104 of the LIFE Act, and, therefore, denied the Form I-485 LIFE Act application on November 10, 2004.

On appeal, the applicant reiterates his claim of continuous residence in this country for the requisite period and asserts that he has submitted evidence in support of such claim. However, the evidence submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 up to 1984 lacks sufficient detail, contains little verifiable information, and both conflicts with and contradicts the substance of the applicant’s own testimony regarding his residence in this country for the requisite period.

Doubt cast on any aspect of the evidence 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of contradictory testimony seriously undermine the credibility of the applicant’s claim of residence in this country for that period from prior to January 1, 1982 up to 1984, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States for the entire requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.12(e) and *Matter of E- M-*, 20 I&N Dec. 77.

Given the applicant’s reliance upon documents with minimal or no probative value and the conflicting and contradictory testimony contained in the record, 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 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 on this basis as well.

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).

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. 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.

The applicant initially testified that he was absent from the United States for forty-seven days in 1987 in testimony on the Form I-687 application and the determination form. The applicant provided a corroborative affidavit from an independent witness confirming his testimony. This absence cannot be considered to be brief. In addition, the applicant acknowledged that he reentered the United States without inspection when he returned to this country after his absence. The applicant's manner of reentry to the United States was unlawful and contrary to the policies reflected in the immigration laws of this country and cannot be considered as innocent. As such, it cannot be concluded that the purpose of the applicant's absence in that period from November 6, 1986 to May 4, 1988 was either brief or innocent within the meaning of 8 C.F.R. § 245a.16(b).

Thus, the applicant failed to establish that he was continuously physical present in the United States in the period beginning on November 6, 1986 and ending on May 4, 1988 as required by 8 C.F.R. § 245a.11(c), and, therefore, is ineligible to adjust permanent resident status under the provisions of the LIFE Act on this basis as well.

Although it appears that the applicant is not rendered ineligible as a result of his criminal history, it must be noted that a review of record reveals that he has been convicted of two separate misdemeanor violations of section 23152(b), Driving a Motor Vehicle with a Blood Alcohol Content of or in Excess of 0.08%, of the California Vehicle Code.

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