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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I STREET, N.W.
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: SEP 30 2003

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).

IN BEHALF OF APPLICANT: [redacted]

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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

permanent residence under stection 1104 of the LIFE Act because she was not related to her step-father during the one year period.

It should be noted that the applicant was born in Bangladesh on November 27, 1985. Pursuant to 8 C.F.R. § 245a.11(b), an eligible alien, as defined in 8 C.F.R. § 245a.10, must demonstrate that he or she entered the United States **prior to January 1, 1982** and resided in this country since that date. The applicant is unable to meet this section 1104 requirement as well.

Counsel insists that the applicant is eligible under a different part, section **1504** of the LIFE Act, Application of Family Unity Provisions to Spouses and Unmarried Children of Certain Life Act Beneficiaries.

Pursuant to 8 C.F.R. § 245a.31, An alien currently in the United States may obtain Family Unity Benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

> (a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;
>
> (b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and
>
> (c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of a alien who has filed a Form I-485 pursuant to Subpart B.

According to counsel, the applicant qualifies under section 1504 because she entered the United States in August 1988 and has been residing continuously in the United States since that date. Counsel asserts that there is no indication in the regulations that the applicant had to be a child of a class member at the time of the original application period from May 5, 1987 to May 4, 1988.

Counsel correctly argues that under the aforementioned section and regulations, the applicant only has to establish that he or she entered the United States before December 1, 1988 and resided in this country since that date. However, obtaining benefits under section 1504 of the LIFE Act is a separate and distinct procedure from obtaining benefits under section 1104 of the LIFE Act.

Under section 1504, the benefit sought is protection from removal. Under section 1104, the benefit sought is permanent residence. As discussed above, under section 1504, the eligibility of a spouse or child is determined by the derivative applicant having entered the

United States prior to December 1, 1998 and maintaining residence from that date. However, under section 1104, the eligibility of the spouse or child is determined by the derivative applicant meeting the same eligibility specifications required of the principal applicant.

The application for permanent residence under section 1104 cannot be approved for the reasons stated above. That is the only application which is before this office on appeal. The application for family unity, Form I-817, is apparently housed in another record, file [redacted] The decision of the director regarding family unity, if adverse, cannot be appealed.

Given her inability to meet the requirements, the applicant is ineligible for permanent residence under section 1104 of the LIFE Act.

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