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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



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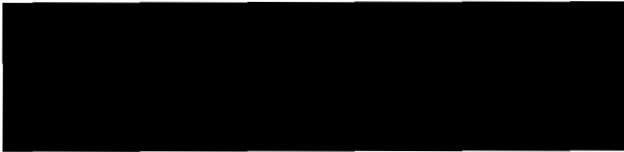
Applicant:



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:



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.

for 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, New York, New York, 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 she had continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988.

On appeal, the applicant asserted that she “applied for application for family unity benefits (form I-817)” in order to qualify as the spouse of an alien who is eligible for adjustment of status pursuant to Section 1104(b) of the LIFE Act. The applicant indicated that she would be submitting a brief and/or additional evidence to the AAO within 90 days. However, more than a year later, no additional correspondence has been presented by the applicant.

The regulation at 8 C.F.R. § 245a.31 states that an alien who is 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;

The applicant has met these requirements as she is a spouse of an eligible alien (marriage occurred on October 13, 1979) and she first entered the United States in October 1988. However, there are regulatory requirements that must still be met in order to be eligible for the benefit being sought.

The regulation at 8 C.F.R. § 245a.33(a) states in pertinent part that an application for Family Unity benefits under section 1504 of the LIFE Act Amendments must be filed on a Form I-817, Application for Family Unity Benefits.

The record reflects that on April 21, 2003, the applicant filed a Form I-485, Application for Permanent Resident, under section 1104 of the LIFE Act. As such, the applicant’s argument, on appeal, is moot as she is referring to the provisions of the Family Unity Program for which she did not apply.

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).

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. 8 C.F.R. § 245a.11(b).

At the time of her interview, the applicant indicated that she arrived in the United States in October 1988. However, on her Form G-325A, Biographic Information, dated April 13, 2003, the applicant indicated that

she resided in her native country, Bangladesh, from October 1979 to January 1996. Nevertheless, given the applicant's inability to meet the statutory requirement of residence in the United States since before January 1, 1982, 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.