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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

SEP 03 2008

MSC 02 074 60060

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. 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India who claims to have lived in the United States since April 1980, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on December 13, 2001. The director denied the application on September 20, 2006 on the ground that the applicant failed to establish his continuous residence in the United States during the statutory period. The director specifically found that the applicant provided inconsistent information regarding his initial entry into the United States and his continuous residence during the statutory period. The director noted that the applicant's testimony that he entered the United States in 1980 and did not travel outside of the United States except for one trip to Canada in 1987 for a period of three weeks was inconsistent with the dates of birth of his two children in India in 1981 and 1983 as stated by the applicant on his Form I-485. The applicant failed to submit independent objective evidence to clarify the inconsistencies in response to the director's NOID and on appeal.

In a Notice of Intent to Deny (NOID), dated April 4, 2006, the director, citing to inconsistencies between the applicant's testimony at his LIFE Legalization interview on February 9, 2004 and pertinent documentation in the record, indicated that the applicant had failed to provide sufficient credible evidence to establish that he had resided continuously in the United States from before January 1, 1982 through May 4, 1988. Specifically, the director noted that the applicant testified that he entered the United States in 1980, and had only one absence from the United States in 1987, when the applicant traveled to Canada in August 1987 and returned in September 1987. The applicant testified to no other trips outside the United States.

On his Form I-485, dated December 3, 2001, the applicant stated that he had two children born in India on November 24, 1981 and October 19, 1983. The director indicated that this apparent contradiction called into question the veracity of the applicant's claim that he has continuously resided in the United States since his entry in 1980. The director also indicated that the affidavits submitted by the applicant as evidence of his continuous residence in the United States during the 1980s were substantively deficient.

In response, counsel submitted a memorandum in which the applicant attempted to explain the inconsistencies in the dates of birth of his children by asserting that the dates provided on the Form I-485 were typographical errors and that his children were twins born on June 1, 1980. The applicant did not submit any additional documentation with the response. The director found that the explanation offered by the applicant for the inconsistent birth dates of his children was not credible, and was not supported by birth certificates or other documentation. The director concluded that the applicant had failed to overcome the grounds for denial stated in the NOID.¹

¹ The applicant's claim in response to the NOID and on appeal that the two children in question were twins born on June 1, 1980 contradicts (1) a Form I-687 the applicant completed in 1990,

On his Form I-290B, Notice of Appeal to the AAO filed on October 13, 2006, counsel indicated that he needed thirty days to submit a brief and/or evidence to the AAO. On the body of the form, counsel indicated that a Memorandum of Appeal is attached with the Form I-290B. The AAO notes that a review of the Memorandum of Appeal attached by counsel is a carbon copy of the memorandum he submitted in response to the director's NOID, which the director considered in his decision to deny the application. Counsel did not allege any new information on the memorandum and submitted no additional documentation with this appeal.

Counsel did not allege any legal or factual error in the director's decision and did not submit additional documents. As of the date of this decision, no additional evidence has been submitted, and the record will be deemed complete.

Any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv).

A review of the decision reveals that the director set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed all the bases for denial.

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). In this case, the applicant has failed to meet his burden of proof.

The appeal must therefore be summarily dismissed.²

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

on which he stated that the children were born in 1980 and 1981 (dates unspecified), (2) the Form I-485 filed in 2001, on which the applicant stated that the children were born in India on November 24, 1981 and October 19, 1983, and (3) the applicant's testimony at his LIFE Legalization interview in 2004, where he stated that the children were born in India on March 7, 1980 and January 2, 1981.

² The AAO also notes that the applicant has been convicted of a series of criminal offenses in New York State – five in all between 1994 and 2000 - which appears to make the applicant inadmissible for LIFE Legalization under Section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).