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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEWARK Date: FEB 26 2009

MSC 02 169 63378

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Newark, New Jersey. The applicant filed a "motion to reopen and reconsider," which the director also denied. The applicant then filed an appeal, which was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on a motion to reopen (MTR). The motion will be rejected.

The applicant, who was born in India on September 2, 1969, and claims to have lived in the United States since August 1981, filed his application for legal permanent resident status under the LIFE Act (Form I-485) on March 18, 2002. On December 20, 2003, the director denied the application on the ground that the applicant failed to establish, in accordance with a notice of intent to deny on May 27, 2003, that he entered the United States before January 1, 1982, and 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. A "motion to reopen and reconsider," filed by the applicant on January 14, 2004, was taken into consideration by the director, but denied on June 22, 2006.

On July 20, 2006, the applicant filed a Form I-290B, Notice of Appeal to the AAO. The appeal was summarily dismissed by the AAO on August 1, 2008, after the applicant failed to address the basis for the denial and failed to submit a brief or any additional evidence. The applicant then filed a motion to reopen, which is currently before the AAO.

The regulation at 8 C.F.R. § 245a.20(c) specifically provides that "[m]otions to reopen a proceeding or reconsider a decision shall not be considered" in proceedings under the LIFE Act. Thus, the applicant's motion is precluded by the regulation. [1] The district director did have the authority, under 8 C.F.R. § 245a.20(c), to reopen or reconsider this case *sua sponte* (i.e., on his or her own motion), and did so in effect by considering the applicant's initial motion and resubmitted evidence on the merits, before denying the motion in June 2006. The applicant has submitted no further legal arguments or evidence on appeal, so the record before the AAO is the same as that previously before the director. In accord with the director's decision, the AAO determines that the record in this case does not warrant a reopening *sua sponte*. [2]

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[1] The AAO's decision dismissing the appeal specifically advises the applicant on the cover page that "you are not entitled to file a motion to reopen or reconsider your case."

[2] The record does not include any contemporary documentation from the 1980s showing the applicant to have been resident in the United States during that decade. The only evidence submitted by the applicant as evidence of his continuous residence in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 – the requisite time period for legalization under the LIFE Act – consists of a series of letters and affidavits, dated in 1991 and 2002, from individuals who claim to have resided with, employed, worked with, or otherwise known the applicant in the United States during the 1980s.

According to [redacted] and [redacted] in 1991, the applicant worked for their respective companies as follows: (1) [redacted] in East Meredith, New York, as a "helper" for room and board

Since the applicant is not entitled to file a motion to reopen in his own right, as the regulation at 8 C.F.R. § 245a.20(c) clearly states, the AAO must reject his motion.

ORDER: The motion to reopen is rejected. This decision constitutes a final notice of ineligibility.

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and a weekly wage paid in cash, from August 1981 to January 1985; and (2) [redacted], in New York City, where "[h]e took care of stock and receiving of goods" for a weekly wage of $250, from March 1985 to November 1990. The documentation from [redacted] and [redacted] does not accord with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because neither [redacted] nor [redacted] indicated whether they had any business records of the applicant's employment, and whether such records are available for review, [redacted] did not describe the applicant's duties in detail, and [redacted] did not identify the applicant's address during his period of employment. Nor are the statements from Mr. [redacted] and [redacted] supplemented by any earnings statements, tax records, or other documentation showing that the applicant was employed at either business. Thus, the documentation from [redacted] and [redacted] has limited probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States during the requisite period for LIFE legalization.

As for the other affidavits and letters – from [redacted] and [redacted] in 1991, and from [redacted], and [redacted] in 2002 – they all have minimalist or fill-in-the-blank formats with little personal input by the authors. Few details are provided by the authors about the applicant's life in the United States, such as where he lived and worked during the 1980s, and the extent of his interaction with them during those years. Finally, only one of the authors, [redacted] claims to have known the applicant as far back as 1981. Thus, the foregoing affidavits and letters have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the requisite period for LIFE legalization.

For the reasons discussed above, the AAO agrees with the director that the evidence of record is insufficient to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as required for the applicant to be eligible for adjustment of status to legal permanent resident under the LIFE Act.