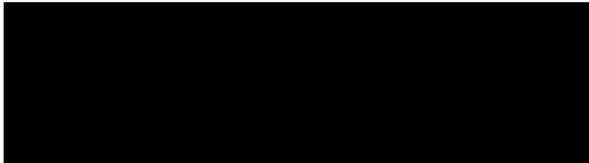




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FILE:

MSC 03 227 60615

Office: PHOENIX

Date: SEP 22 2006

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:



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. Any further inquiry must be made to that office.

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, Phoenix, Arizona, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the applicant is a derivative beneficiary and is not required to show his continuous physical presence from January 1, 1982 to May 1988. Counsel claims that the applicant's only binding requirement is to have entered the United States on or before November 1988.

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 he is a spouse of an eligible alien (marriage occurred on February 27, 1987) and he first entered the United States in May 1985. 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 May 15, 2003, the applicant filed a Form I-485 Application for Permanent Resident under section 1104 of the LIFE Act. As such, counsel's argument, on appeal, is moot as he is referring to the provisions of the Family Unity Program of which the applicant 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).

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.