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FILE: [Redacted] Office: HOUSTON Date:

MSC 02 120 63233

**MAR 31 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. 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, 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, Houston, 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 failed to demonstrate that he entered the United States before January 1, 1982 and resided in a continuous unlawful status through May 4, 1988. Specifically, the director noted that the applicant was born on December 23, 1982, thereby rendering him inadmissible by virtue of being born after the requisite date of entry.

On appeal, counsel asserts that an immigration officer at the Houston District Office improperly advised the applicant's mother to file Form I-485, Application to Register Permanent Resident or Adjust Status. Counsel requests in her appeal brief that "the case be reconsidered as I-817 Family Unity Benefits and an I-130 petition for alien relative, *nunc pro tunc*."

The issue on appeal is whether the applicant met the requirements for permanent resident status under the LIFE Act. Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall 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).

In this matter, it is undisputed that the applicant was not born until December 23, 1982, eleven months and twenty-three days after the required date of entry. The director issued a notice of intent to deny the application on May 19, 2006, advising the applicant of the reason for his ineligibility and affording him the opportunity to respond to and/or rebut these findings. No response was submitted, and the application was subsequently denied on July 29, 2006.

The issue before the AAO is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status since before January 1, 1982. By virtue of his birth nearly one year after the requisite date of entry, the applicant is statutorily ineligible.

On appeal counsel claims that Form I-485 was filed based on erroneous advice by an immigration officer at the Houston office, and submits for consideration on appeal Form I-817, Application for Family Unity Benefits and Form I-130, Petition for Alien Relative on behalf of the applicant's mother [REDACTED]. These applications are not properly before the AAO, as an application or petition must

be filed with the USCIS office with jurisdiction over the application or petition and the place of residence of the applicant or petitioner as indicated in the instructions with the respective form. *See* 8 C.F.R. 103.2(a)(6).

An application for benefits under the Family Unity Program must be filed on Form I-817 at the service center having jurisdiction over the alien's place of residence, with the exception that those filing under section 1504 of the LIFE Act must submit the application to ██████████ in Chicago, Illinois. Form I-817 must be filed with the required supporting documentation and correct fee required by 8 C.F.R. § 103.7(b)(1), which is \$440. 8 C.F.R. § 236.14(a). Moreover, an additional biometric fee of \$80 is required when submitting this form. According to the instructions, Form I-130 must be filed with the Chicago lockbox accompanied by a fee of \$355.

Counsel does not address the director's reason for denying the application for permanent resident status, which is the issue before the AAO on appeal. Alleging that the applicant received erroneous advice from an immigration officer is an insufficient basis for an appeal and does not afford the applicant the right to disregard filing procedures for new applications which are clearly outlined in the regulations.

As previously stated, the issue before the AAO is whether the applicant entered the United States prior to January 1, 1982. Since he was not born until December 23, 1982, he is therefore ineligible as a matter of law. The applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988 as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

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