



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON

Date:

MAY 23 2008

MSC 02 005 62487

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:

SELF-REPRESENTED

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 District Director, Houston, Texas, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application, finding that the applicant was statutorily ineligible to adjust his status to that of a lawful permanent resident under the LIFE Act because he entered the United States for the first time in 1999.

On appeal, the applicant asserts that on May 14, 2003, it was determined that he was prima facie eligible for adjustment of status under LIFE Legalization. He asserts that his appeal warranted favorable action and that it was ordered that all his applications, Forms I-485, I-765, and I-131 be approved.

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).

The issue in this proceeding is whether the applicant is statutorily eligible for permanent resident status under section 1104 of the LIFE Act.

The record reflects that on September 11, 2001, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status.

On February 15, 2002, the director sent the applicant a Notice of Intent to Deny (NOID) his application, finding that the applicant appeared ineligible to adjust status under the LIFE Act because the evidence submitted did not establish that he applied for class membership in one of the required legalization class action lawsuits.

On September 3, 2002, the director denied the application finding that the applicant was statutorily ineligible to adjust status under the LIFE Act because he did not establish membership in a required class action lawsuit.

The applicant appealed that decision to the AAO. On May 14, 2003, the Citizenship and Immigration Services (CIS) National Benefits Center approved the applicant's appeal and reopened the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status. The National Benefits Center withdrew the September 3, 2002, denial of the applicant's Form I-485, and ordered that the director continue processing the Form I-485. In addition to the Form I-485, the applicant had also submitted a Form I-765, Application for Employment Authorization, and a Form I-131, Application for Travel Document. In its May 14, 2003, decision, the National Benefits Center also ordered that the applicant's Forms I-765 and I-131 be approved. Processing of the Form I-485 continued.

On June 22, 2005, the applicant appeared for an interview based on his Form I-485.

On July 1, 2005, the director sent the applicant a Notice of Intent to Deny (NOID) his application. The director stated that all documents submitted with his application indicated that the applicant's initial entry into the United States was in 1999. The director stated that, at his interview, the applicant was placed under oath and asked to state the date of his first entry. The applicant replied that it was 1999. The applicant was asked a second time and it was emphasized that the interviewing officer needed to know the first time the applicant entered the United States. **The applicant again replied 1999. The director determined that the applicant was statutorily ineligible to adjust status to that of a legal permanent resident under the LIFE Act.** The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

On September 8, 2005, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, the applicant asserts that on May 14, 2003, it was determined that he was prima facie eligible for adjustment of status under LIFE Legalization. He asserts that his appeal warranted favorable action and that it was ordered that all his applications, Forms I-485, I-765, and I-131 be approved.

The applicant is incorrect in his assertion that the National Benefits Center approved his Form I-485. The National Benefits Center did not make a final decision regarding the applicant's Form I-485. Instead, the National Benefits Center told the applicant that he had shown prima facie eligibility for adjustment of status under LIFE Legalization. Prima facie means initial eligibility, based on answers provided by the applicant on his Form I-485, it does not mean final eligibility and approval. The National Benefits Center simply reviewed the Form I-485 to determine the applicant's prima facie, or initial claim of eligibility. The National Benefits Center

stated that the Notice of Decision denying his application was withdrawn and the director would continue processing his Form I-485 application.

The National Benefits Center did order that the applicant's Form I-765, Application for Employment Authorization, and Form I-131, Application for Travel Document be approved. The National Benefits Center did not order that the Form I-485 be approved, only that the Service continue processing it, meaning that it would be forwarded to the applicant's local CIS district office so that he could be interviewed to determine his actual eligibility to adjust status under the LIFE Act. The interview at the CIS Houston District Office was meant to determine whether or not the applicant was, in fact, eligible to adjust status under the LIFE Act. It was determined at his interview that he was in fact not eligible because he entered in 1999, 17 years after the statutory requirement.

The applicant does not assert, nor does the record of proceeding contain any evidence, that he entered before January 1, 1982, and that he has resided continuously and unlawfully through May 4, 1988. All indications in the record of proceeding are that he entered the United States for the first time in 1999. Therefore, based on the above, 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 statutorily ineligible for permanent resident status under Section 1104 of the LIFE Act.

As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

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