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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] OFFICE: California Service Center DATE: NOV 22 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: [REDACTED]

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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*  
for

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant neither demonstrated that her authorized stay had expired as of January 1, 1982 or that she was otherwise in an unlawful status which was known to the government as of January 1, 1982.

On appeal, counsel for the applicant asserts that the applicant's unauthorized employment, along with her failure to file quarterly address reports to Citizenship and Immigration Services (CIS) prior to January 1, 1982, rendered her in violation of the terms of her nonimmigrant status and, therefore, in unlawful status.

An applicant for temporary residence 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 the date the application is filed. In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, such alien must establish that the period of authorized stay as a nonimmigrant expired before such date through the passage of time or that the alien's unlawful status was known to the Government as of such date. Section 245A(a)(2) of the Act, 8 U.S.C. 1255a(a)(2).

The word "Government" means the United States Government. An alien who claims his or her unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I&N Dec. 823 (Comm. 1988).

The applicant was admitted to the United States on January 8, 1981 as an F-1 nonimmigrant student. An examination of the record indicates that she reentered the U.S. and was readmitted on August 21, 1981, August 14, 1982, and August 19, 1986, respectively. The record further indicates that on February 22, 1988, the applicant's status was changed to H-1 nonimmigrant temporary worker, with stay extended to February 1, 1990. The applicant has, therefore, not demonstrated that her authorized stay expired prior to January 1, 1982. It must, therefore, be determined whether the applicant was nevertheless in an unlawful status which was known to the Government as of that date.

Counsel asserts that the applicant's status became unlawful when she commenced working without authorization. According to counsel, the applicant, although not authorized to work outside of campus as a condition of her F-1 visa, was nevertheless engaged in employment as a waitress in Moy's Three Stars Restaurant prior to January 1, 1982. In support of this assertion, counsel submits an acquaintance affidavit attesting to the applicant's having worked

at this restaurant from May to June 1981. However, counsel has provided no additional evidence, such as declarations or statements from the applicant's purported employer, regarding the dates, duration or extent of the applicant's employment. Nor has counsel submitted actual evidence that the government was aware of this employment as of January 1, 1982.

Counsel states the applicant's F-1 student status, and therefore her authorized stay, became null and void when the applicant worked illegally in 1981. While counsel argues the applicant did not have an authorized stay from that point onward, it is reiterated that Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for legalization. The first was to clearly demonstrate the authorized stay expired prior to January 1, 1982. (It is noted Congress did not state the applicant had to have been in a lawful status which expired prior to January 1, 1982, but rather that his authorized stay had expired by that date.) The second was to show that, although the authorized stay had not expired as of January 1, 1982, the applicant was nevertheless in an unlawful status which was known to the Government as of that date. In doing so Congress acknowledged it was possible to have an authorized stay and yet still be unlawful due to another reason, such as illegal employment. However, the Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982. While counsel claims that the applicant's having engaged in illegal employment as a waitress in [REDACTED] Three Stars Restaurant prior to January 1, 1982 rendered her stay unauthorized, there is no evidence the Government was aware of any unlawfulness.

Counsel, on appeal, also asserts that the applicant willfully failed to file mandatory annual and quarterly address reports prior to January 1, 1982. Counsel cites the case of LEAP, 976 F2d 1208-09 (1993). In that decision, the court emphasized the penalties to aliens for failure to file address reports and noted that the question of whether or not an alien's failure to file was intentional or inadvertent was irrelevant. That case remains unsettled; there is no binding nationwide court decision at this point. However, in *Matter of H-*, 20 I&N Dec. 693 (Comm. 1993), it was held that the absence of mandatory annual and quarterly registration (address) reports from Government files in violation of section 265 of the Act does not warrant a finding that the applicant's unlawful status was "known to the Government" as of January 1, 1982. That precedent decision is binding.

In this case it is clear the applicant's authorized stay did not expire prior to January 1, 1982. Moreover, the applicant has not established that she was in unlawful status which was known to the government as of January 1, 1982.

An alien applying for adjustment of status has the burden of proving 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 under the provisions of section 245A of the Act, 8 U.S.C. 1255a, and is otherwise eligible for



adjustment of status. 8 C.F.R. 245a.2(d)(5). The applicant has failed to meet this burden.

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