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U.S. Citizenship
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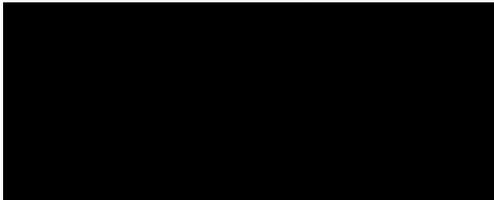
IN RE:

Applicant:



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:



PUBLIC COPY

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. If your appeal was sustained, or if your case 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, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that 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, and therefore denied the application.

On appeal, counsel contends that the applicant violated her F-1 nonimmigrant status by failing to fulfill the registration requirements (address reporting) of section 265 of the Act, and therefore such violation of status was known to the Government as of January 1, 1982.

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 Immigration and Nationality Act (INA), 8 U.S.C. § 1255a(a)(2).

The word "Government" means the United States Government. An alien who claims his 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 as a visitor on October 18, 1976, with stay authorized to December 20, 1976. Her status was changed to that of student on December 12, 1977, with stay authorized to January 31, 1979. Her stay was then extended to "duration of status." However, on February 23, 1981, 8 C.F.R. § 214.2(f)5 was amended to provide that each student previously granted duration of status was converted to "date certain" status as certified on Form I-20. This meant that such a student was then authorized to remain in student status until the expected date of completion of his or her academic program as shown on Form I-20. The applicant has not shown that her expected completion date was before January 1, 1982, and therefore has not demonstrated that her authorized stay expired prior to January 1, 1982. It must be determined whether the applicant was nevertheless in an unlawful status that was known to the Government as of that date.

Counsel contends that the applicant was in an unlawful status prior to January 1, 1982, because she failed to submit address reports as required by section 265 of the INA. He asserts that such failure constitutes a violation of the applicant's status. Counsel cites the ruling issued by the United States District Court in *Immigration Assistance Project of the Los Angeles County Federation of Labor v. Immigration and Naturalization Service*, No. C88-379R, United States District Court, Western District of Washington. However, that court case is still being litigated. The issue of address reporting was decided in *Matter of H-*,

20 I & N Dec. 693 (Comm. 1993), in which the Associate Commissioner held that a willful violation of the section 265 reporting requirement constituted a violation of status. In that case, the alien's claim that he had willfully failed to file address reports was deemed credible in part because he consistently made such claim from the time he applied for temporary residence. In this case, the applicant did not claim to have violated her status in such a manner when she applied for temporary residence, or even later when she was sent notices advising her to explain and demonstrate how she had violated status. It was only on appeal that counsel made such claim. Therefore, the claim is not credible.

Even if we were to conclude that the applicant's claim of having failed to file address reports is credible, *Matter of H--*, supra, 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*. Therefore, it is concluded that the applicant has not shown, through her claim of failing to file address reports, that she was in an unlawful status which was known to the Government as of January 1, 1982.

The applicant has not demonstrated that she otherwise violated her status prior to January 1, 1982. In fact, in a letter dated April 8, 1988, the director of the applicant's school stated that the applicant did not violate her status and was a full time student "throughout the period in question." The school official had been asked to indicate if she had reported the alien as having dropped out of status before January 1, 1982.

In this case the applicant's authorized stay did not expire prior to January 1, 1982. Moreover, neither counsel nor the applicant has 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.

[REDACTED]

[REDACTED] this is odd, in that [REDACTED] represented her on appeal, withdrew, and then came back into it. (He represents the whole IAP class also.) When he came back in 1991, he did not complain about not receiving a copy of the record, although he made that request on appeal in 1989. Maybe he rec'd a copy, and it's just not apparent. Regardless, he hasn't really filed anything since 1989, and has shown no interest in this matter since then. He never filed a brief. I see no reason to hold this up by issuing a copy of the record.

DMK
8-23-05