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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
XLA 88 508 7072

Office: CALIFORNIA SERVICE CENTER

Date: APR 17 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 902 of the Foreign Relations Authorization Act of 1988 and 1999

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. 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, Chief
Administrative Appeals Office

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

The director denied the application because the applicant failed to establish that her authorized stay expired prior to January 21, 1985.

On appeal, counsel asserts the applicant was in violation of her nonimmigrant status, and is entitled to approval of her application.

There are two separate provisions of law relating to nonimmigrants and legalization: the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1255a (incorporated into section 245A of the Immigration and Nationality Act), and section 902 of the Foreign Relations Authorization Act of 1988 and 1989, Pub. L. 100-204, 101 Stat. 1399, Dec. 22, 1987, 8 U.S.C. § 1255a note, as amended, in which the legalization (temporary residence) provisions are commonly referred to as the extended voluntary departure (EVD) provisions. Each has different eligibility requirements.

An applicant for temporary residence under the Immigration Reform and Control Act of 1986 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. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant did not apply under this section.

An applicant for adjustment to temporary resident status under section 902 of the Foreign Relations Authorization Act of 1988 must be of a nationality designated by the Attorney General at any time during the five-year period ending November 1, 1987 as eligible for "extended voluntary departure." 8 U.S.C. § 1255a note. Such designation was limited to nationals of Poland, Ethiopia, Uganda and Afghanistan. 8 C.F.R. § 245a.4(a)(9).

In accordance with 8 C.F.R. § 245a.4(b)(4)(vi), an alien of a designated nationality applying for adjustment of status under section 902 of the Foreign Relations Act of 1988 must prove by a preponderance of the evidence that:

1. She applied for adjustment of status as of December 22, 1989;
2. She entered the United States before July 21, 1984, and has resided continuously in the United States since such date and through December 22, 1987;
3. She maintained continuous physical presence in the United States (other than brief, casual and innocent absences) since December 22, 1987;
4. In the case of an alien who entered the United States as a nonimmigrant before July 21, 1984, she must demonstrate that (A) her period of authorized stay as a nonimmigrant expired not later than six months after such date through the passage of time or (B) she applied for asylum before July 21, 1984; and
5. She is otherwise admissible as an immigrant under section 245A(a)(4) of the Immigration and Nationality Act. 8 U.S.C. § 1255a note.

On her Application for Status as a Temporary Resident the applicant, a national of Ethiopia, claimed that she entered the United States on September 3, 1983 as a nonimmigrant F-1 student. She furnished Form I-94, Departure Record, demonstrating that she entered the United States as claimed. She further claimed not to have been absent from the United States through April 30, 1988, the date she completed the application.

The applicant has submitted sufficient evidence to establish that she is a citizen of Ethiopia who entered the United States before July 21, 1984, resided continuously in this country, and was physically present here since December 22, 1987. She clearly meets the first three requirements listed above. Also, regarding the fifth requirement, there is no indication that she is inadmissible. Finally, she did not apply for asylum before July 21, 1984. Therefore, it is necessary to determine whether she otherwise meets the fourth requirement by demonstrating that her nonimmigrant stay expired prior to January 21, 1985.

The applicant was admitted to the United States in September 1983 as a student for "duration of status." This means her authorized stay was to the date she was expected to complete her studies. There is no indication, and the applicant has not claimed, that she was enrolled in a short program that she was expected to complete by January 21, 1985. Indeed, the computer report in the record from the student/school system database indicates her academic program was to end on May 10, 1987. Further, an affidavit in the record from [REDACTED] states the applicant lived with the affiant from September 1983 to August 31, 1986 while attending college. As the applicant was attending school at least until August 31, 1986, in a program she was expected to complete in May 1987, it cannot be held that her authorized stay expired through the passage of time prior to January 21, 1985.

Counsel has furnished Social Security records and other proof that the applicant worked in 1984 and 1985. Counsel states it is clear that the applicant was in violation of her status, and contends that she may have her temporary residence approved on that basis. However, there is no provision in section 902 cases which allows an alien to qualify under the "unlawful and known to the government" provision contained in section 245A cases. While the applicant may have violated her status by working without authorization, such a violation does not render her eligible for temporary residence under section 902. Although she could be said to have "lost" her F-1 status, it was not "through the passage of time" but rather through unlawful employment. "Through the passage of time" means through the expiration date of the nonimmigrant permission to remain in the United States, including any extensions and/or changes of status. 8 C.F.R. § 245a.4(a)(12).

Under these circumstances, it cannot be concluded that the applicant has established that her authorized stay expired by January 21, 1985. As the applicant has not demonstrated eligibility for the benefit of temporary residence under section 902, the appeal must be dismissed.

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