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U.S. Citizenship  
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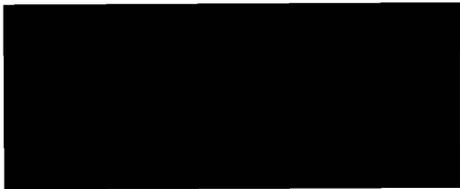


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 11 2007  
XMA 88 146 5098

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:



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 was denied by the Director, Eastern 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 his authorized stay had expired as of January 1, 1982, or that he 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 his 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. Counsel asserts that the "Supplemental Order V" issued by Judge Stanley Sporkin in *Ayuda, Inc. v. Meese*, 687 F.Supp. 650 (D.D.C. 1988), supported this argument and precluded the Service from denying the application of a nonimmigrant who violated his status by failing to fulfill the registration requirements of section 265 of the Act. Counsel claims that the applicant also violated his F-1 student status by engaging in unauthorized employment prior to 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 (Act), 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 an F-1 student attending the ESL Language Center in River Forest, Illinois on December 9, 1979, with stay authorized to August 16, 1980. The applicant's request for a transfer to another academic institution was granted by the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) on April 6, 1980, with stay authorized to June 30, 1982. Clearly, the applicant's period of authorized stay did not expire 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 he failed to submit address reports as required by section 265 of the Act. Counsel asserts that the "Supplemental Order V" issued by Judge Stanley Sporkin in *Ayuda, Inc. v. Meese*, 687 F.Supp. 650 (D.D.C. 1988), supported this argument and precluded the Service and its successor CIS

from denying the application of a nonimmigrant who violated his status by failing to fulfill the registration requirements of section 265 of the Act. However, the record shows that this order was subsequently vacated by the District of Columbia Circuit Court in the decision issued in *Ayuda, Inc. v. Meese*, 880 F.2d 1325 (D.C. Cir. 1989). Furthermore, 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. As of the date of this decision, the ruling issued in *Matter of H-*, *id.*, remains the controlling precedent in regard to this issue.

Counsel claims that the applicant violated his F-1 student status by engaging in unauthorized employment prior to January 1, 1982. However, neither the applicant nor counsel has provided any evidence to corroborate this claim. Further, at part #36 of the Form I-687, Application for Status as a Temporary Resident, where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he was a student from December 1979 to January 1982 and listed employment in various grocery stores in Chicago, Illinois as beginning in January 1982. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Even if the applicant had worked prior to January 1, 1982 as counsel claims on appeal, the record contains no evidence that would warrant a finding that the applicant's unlawful status in the United States was known to the Government as of January 1, 1982 pursuant to *Matter of P.*, 19 I&N Dec. 823 (Comm. 1988). Thus, we cannot conclude the applicant was in an unlawful status that was known to the Government as of January 1, 1982, as a result of unauthorized employment.

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 he 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.