

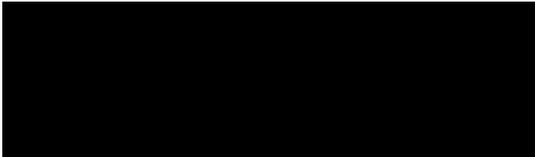
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042,
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U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

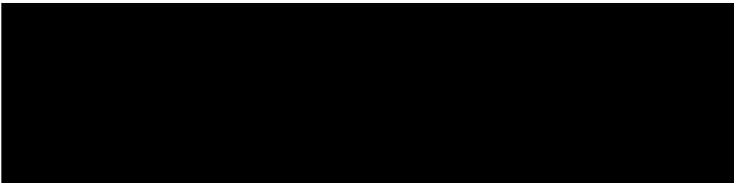
Office: Los Angeles

Date: 7/27/05

IN RE: Applicant: [Redacted]

PETITION: 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:



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 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, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application based upon the conclusion that the applicant was a lawful F-1 student during the first few months of 1982 and, therefore, did not reside unlawfully in the United States since prior to that date through May 4, 1988.

On appeal, counsel asserted that the applicant did reside unlawfully in the United States from January 1, 1982 through May 4, 1988, because he violated his F-1 student visa status by engaging in unauthorized employment prior to January 1, 1982.

To be eligible for adjustment to permanent resident status under the LIFE Act the applicant must establish his or her continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as continuous physical presence in the United States from November 6, 1986 through May 4, 1988. 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.

(ii) Nonimmigrants - 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.

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).

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for permanent residence under the LIFE Act. The first was to clearly demonstrate the authorized period of stay expired prior to January 1, 1982. 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 that 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 LIFE Act very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

The record reflects that the applicant first entered the United States on April 6, 1979 as a F-1 student attending United States International University in San Diego, California with stay authorized for duration of status. The record shows that the applicant subsequently received authorization to transfer to San Diego State University for the fall semester in 1980, and that he remained a student at this institution through September 10, 1982. While the applicant claimed that he violated his F-1 student status when he stopped attending

classes in the fall semester of 1981, the record contains a letter signed by [REDACTED] International Student Advisor at San Diego State University, who stated that the applicant withdrew from classes at this institution on September 10, 1982. Clearly, the applicant's authorized stay did not expire through the passage of time prior to January 1, 1982.

In denying the application, the district director concluded that the applicant was a lawful F-1 student during the first few months of 1982 and, therefore, did not reside unlawfully in the United States since prior to that date through May 4, 1988. Although the district director was correct in determining that the applicant's authorized stay had not expired as of January 1, 1982, no effort was made to examine whether he was nevertheless in an unlawful status that was known to the Government as of that date. This is significant in that the applicant has consistently claimed that he violated his F-1 student status by engaging in unauthorized employment prior to January 1, 1982.

The record contains three letters of employment from three different individuals attesting to the fact that the applicant began working a variety of jobs beginning in January 1980 up through April 1982. The record contains no evidence demonstrating that the applicant was authorized to accept employment as a F-1 student. However, the applicant has failed to provide any evidence, such as a Social Security Administration earnings statement or computer printouts, 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 which was known to the Government as of January 1, 1982, as a result of unauthorized employment.

The statements of counsel on appeal have been considered. Nevertheless, in this case the applicant has failed to establish that his authorized stay expired prior to January 1, 1982. In addition, the applicant has failed to demonstrate that he was otherwise in an unlawful status that was known to the Government as of January 1, 1982. The applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act.

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 applicant has failed to meet this burden. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v.*

Catholic Social Services, Inc., 509 U.S. 43 (1993) (*LULAC*), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (*Zambrano*). See 8 C.F.R. § 245a.10.

The regulations provide an illustrative list of documents that an applicant may submit to establish that he or she filed a written claim for class membership before October 1, 2000. Those regulations also permit the submission of "[a]ny other relevant document(s)." See 8 C.F.R. § 245a.14.

The applicant neither claimed nor documented that he had applied for class membership in any of the requisite legalization lawsuits in his LIFE Act application. Rather, the record shows that the applicant timely filed a Form I-687 legalization application on March 19, 1988. The Form I-687 legalization application was subsequently denied on February 12, 1998. The applicant appealed the denial of the legalization application and this appeal was dismissed by the AAO on May 30, 2000. Section 1104 of the LIFE Act contains no provision allowing for the reopening and reconsideration of the matter, as the original application for temporary resident status under section 245A of the INA had been filed by the applicant in a timely manner.

The fact that an alien filed a timely legalization application does not establish eligibility to adjust to permanent residence under the LIFE Act. The legalization class-action lawsuits discussed above relate to aliens who claim they did not file applications in the 1987-1988 application period because they were improperly dissuaded by the Service from doing so. The applicant provided no explanation as to why he would have sought membership in the legalization class-action lawsuits as he had not been improperly dissuaded by the Service and did file a timely application on March 19, 1988.

The applicant has failed to provide evidence establishing that he filed a written claim for class membership in any of the aforementioned legalization class-action lawsuits prior to October 1, 2000. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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