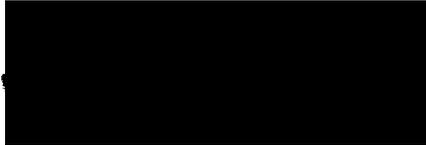


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Services

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FILE:



Office: BALTIMORE

Date: JAN 25 2005

BAL-04-032-50022

IN RE:

Applicant:



APPLICATION:

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. Any further inquiry must be made to that office.

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, Baltimore, Maryland and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel argued that the director failed to take into consideration that the applicant did not work full-time while employed at the Cameroon Embassy in Washington, D.C. contrary to her undertaking as holder of diplomatic visa. Counsel claimed the applicant's presence, therefore constituted an unlawful stay. Counsel requested an extension of 60 days in which to submit a brief and/or evidence to the AAO. To date, no brief and/or evidence has been presented by either counsel or the applicant..

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. 823 (Comm. 1988).

The regulation at 8 C.F.R. §245a.15(d) describes unlawful status as:

- (1) An eligible alien who entered the United States without inspection prior to January 1, 1982.
- (2) *Nonimmigrants*: An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, whose authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time, or whose unlawful status was known to the Government before January 1, 1982. Known to the Government means documentation existing in or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

- (i) *A or G non-immigrants.* An eligible alien who entered the United States for duration of status (D/S) in one of the following nonimmigrant classes, A-1, A-2, G-1, G-2, G-3 or G-4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982. A dependent family member may be considered a member of this class if the dependent family member was also in A or G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

The record reflects that the applicant entered the United States on June 16, 1981 with a nonimmigrant A-2 visa. The record contains a letter dated January 26, 2001 from the Chief of Personnel of the Embassy of the Republic of Cameroon in Washington, D.C. indicating that the applicant was employed as a secretary from June 30, 1981 through August 1, 1997.

In a Notice of Intent to Deny issued on June 3, 2003, the director informed the applicant that she was ineligible for the benefit being sought because she was not in an unlawful status since prior to January 1, 1982 through May 4, 1988. The director also noted that the applicant had made numerous trips outside of the United States and requested an explanation for each departure. However, such request was not warranted as it would not have overcome the applicant's nonimmigrant lawful status during the period in question.

Counsel, in response, asserted that upon the applicant's return to the United States in March 1986, she did not report to work until June 1986. Counsel claimed that the applicant's "continuous stay while not working for the Embassy is contrary to her being an A-2 visa holder that put her out of status."

Counsel, however, provides no evidence that the applicant's employment was terminated or that her A-2 status ceased to be recognized by the Department of State. This is true not only of this period of time, but for the entire period of required residence. The applicant traveled extensively on her A-2 visa during her period of employment with the Embassy of the Republic of Cameroon. It therefore must be assumed that she maintained her lawful status.

Accordingly, the applicant has failed to establish that she resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Therefore, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

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