

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

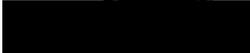


**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



L2

FILE: 

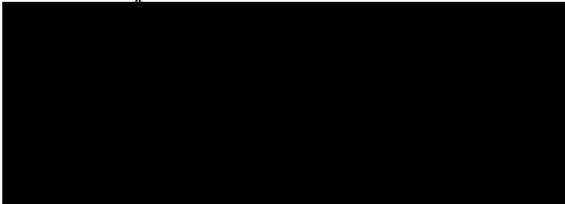
Office: Baltimore

Date: **JAN 26 2005**

IN RE: Applicant: 

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

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 (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant purportedly made lawful entries into the United States after January 1, 1982 and, therefore, did not reside unlawfully in the United States since prior to that date through May 4, 1988. The district director also determined that the applicant failed to establish that his authorized period of stay as a nonimmigrant expired through the passage of time prior to January 1, 1982 or that he otherwise resided in an unlawful status that was known to the Government as of such date.

On appeal, counsel asserted that the applicant's entries into this country after January 1, 1982 were not lawful because he was returning to an unlawful residence. Counsel contended that the applicant violated his F-1 student visa status prior to January 1, 1982, and that the Government had knowledge that he had violated such status as of this date.

The record shows that counsel subsequently requested a copy of the record of proceedings on the applicant's behalf. The record reflects that the AAO complied with the request and mailed a copy of the record to counsel on April 5, 2004.

An applicant for permanent resident status under section 1104 of 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 one 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 section 1104(b) of the LIFE Act and 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.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his 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).

The record shows that that the applicant is a class member in a legalization class-action lawsuit who submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA, on November 9, 1990. The record further shows that the applicant subsequently submitted his application for permanent residence pursuant to the LIFE Act on September 6, 2001.

The record contains photocopied pages of the applicant's Nigerian passport that reflect he first entered the United States on September 27, 1981 as a F-1 student attending Troy State University in Troy, Alabama, with stay authorized for duration of status. The record shows that the applicant remained a student at this institution through his graduation from the undergraduate program in June 1985. Clearly, the applicant's authorized stay did not expire through the passage of time prior to January 1, 1982.

On the Form I-687 application, the applicant noted that he violated his F-1 student status by working without authorization. In support of this claim, the applicant submitted an employment letter signed by Come [REDACTED] executive chef for the Commerce Club in Atlanta, Georgia. In his letter [REDACTED] stated that the applicant was employed as a dishwasher by this enterprise from November 1981 to December 1982. The record contains original employment documents and an additional employment letter reflecting that the applicant was employed in a variety of jobs from June 1984 through January 1986. The record also contains a single page of the applicant's Social Security Administration earnings statement reflecting a summary of his F.I.C.A. earnings from 1982 to 2001.

With his LIFE Act application, the applicant included a statement in which he admitted that he departed the United States on two occasions in the period from his arrival in this country on September 27, 1981 to May 4, 1988. Specifically, the applicant admitted being absent from this country from December 9, 1983 to January 14, 1984 and from August 27, 1987 to September 27, 1987.

In denying the LIFE Act application, the district director determined that the applicant was in a lawful status when he was readmitted to the United States as an F-1 student on January 14, 1984 and September 27, 1987. However, the record contains sufficient evidence to conclude that the applicant violated his F-1 student status by engaging in unauthorized employment both prior to and subsequent to his reentries to this country on January 14, 1984 and September 27, 1987. Therefore, the applicant cannot be considered to have been in a lawful status when he entered the United States on these two respective dates as he had previously violated the terms of his F-1 student visa by engaging in unauthorized employment. The AAO has consistently held that an applicant who has previously violated his or her visa status cannot be determined to have made a subsequent lawful entry as such an applicant is returning to an unlawful residence. In this case, it must be concluded that the applicant was returning to an unrelinquished and unlawful residence when he reentered the United States on January 14, 1984 and September 27, 1987. Consequently, the applicant has overcome this basis of the district director's denial.

Counsel contended that the applicant violated his F-1 student visa status prior to January 1, 1982, and that the Government had knowledge that he had violated such status as of this date. Specifically, counsel asserted that the applicant violated his F-1 student visa status because he failed to report his address to the Service as required. However, 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-*, *supra*, remains the controlling precedent in regard to this issue.

Counsel further argued that the applicant had also violated his F-1 student status because he engaged in unauthorized employment. Counsel asserted this violation of status was known to the government as of January 1, 1982, because the applicant utilized a Social Security number provided to him by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). While counsel is correct in concluding that the applicant's unauthorized employment would have violated his F-1 student status, only minimal documentation consisting of a single employment letter has been provided to support the claim that he worked without authorization prior to January 1, 1982.

Regardless, even if we were to conclude the applicant did work as claimed, there is no evidence the Government was aware of the unauthorized employment. Contrary to counsel's assertion, there is no evidence to demonstrate that the applicant utilized a Social Security number provided to him by the Service in engaging in such unauthorized employment. The applicant's Social Security Administration earnings statement clearly reflects that his F.I.C.A. earnings began in the 1982 tax year from January 1, 1982 to December 31, 1982. The Social Security Administration earnings statement is direct evidence that the applicant had no earning subject to F.I.C.A. taxes prior to January 1, 1982. Therefore, the earnings statement cannot be considered as a document 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.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for legalization. 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 INA very clearly states the unlawfulness had to have been known to the Government as of January 1, 1982.

Counsel's statements on appeal have been considered. Nevertheless, in this case it is clear that the applicant's authorized stay did not expire prior to January 1, 1982. In addition, the applicant has failed to establish that he was otherwise in an unlawful status that 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 INA, 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.