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U.S. Citizenship
and Immigration
Services

LA
JAN 27 2005

FILE:

Office: Sacramento

Date:

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:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant was in a lawful status as a F-1 nonimmigrant student from August 21, 1981 to 1983. The district director further determined that the applicant was also in a lawful status when he adjusted to conditional resident status as the spouse of a United States citizen on June 18, 1987. Therefore, the district director denied the application because he had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant requests that he be allowed to remain in this country to support his children.

An applicant for permanent resident status 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 May 4, 1988. 8 C.F.R. § 245a.11(b).

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).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 or her 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 applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the INA on March 16, 1990. On the Form I-687 application, the applicant indicated that he first entered the United States with a nonimmigrant F-1 student visa issued on August 3, 1981, and that he violated by such status by working without authorization from the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) from 1981 to 1983. In support of his claim, the applicant has submitted employment letters as well as a Social Security Administration Earnings Statement reflecting wages earned by the applicant beginning in 1981 through to 2001. The record contains no evidence demonstrating that the applicant was authorized to accept employment as a F-1 student. Clearly, the applicant entered the United States as a nonimmigrant F-1 student in 1981 and violated such status by engaging in unauthorized employment before January 1, 1982. The record contains sufficient evidence to establish that such unlawful status was known to the Government as of this date pursuant to *Matter of P, supra*. Thus, the applicant has overcome that basis of the denial relating to the determination that he was in a lawful status as a F-1 nonimmigrant student from August 21, 1981 to 1983.

The record shows that the applicant possessed another Administrative file or A-file, [REDACTED] which has been consolidated into the current record of proceedings. The record contains a Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence, which was approved by the Service on June 18, 1987, and accorded the applicant lawful conditional resident status as the spouse of a United States citizen. The record further shows that the applicant remained in this lawful status through May 4, 1988, the expiration date of the requisite period of continuous unlawful residence for eligibility under the LIFE Act. On September 27, 1989, the applicant and his spouse appeared for an interview at the Service's Dallas, Texas district office. The notes of the Service officer who conducted this interview reveal that the applicant's spouse stated that she and the applicant continued to maintain marital relations and hoped to "...work things out when he gets out of school," despite the fact that they did not live together when he was attending school. The record shows that the applicant's spouse also provided a written request to withdraw the Joint Petition to Remove the Conditional basis of Alien's Permanent Resident Status that had been previously filed on the applicant's behalf. On September 29, 1989, the Service terminated the applicant's conditional residence on September 29, 1989 pursuant to section 216(c)(3)(C) of the Immigration and Nationality Act based upon an adverse determination regarding the nature of the qualifying marriage.

The record clearly demonstrates that from June 18, 1987 to September 29, 1989, the applicant lawfully resided in the United States as the spouse of a United States citizen. While he eventually lost that status, there is no basis upon which to conclude he was in an unlawful status for that twenty-six month period. Consequently, the applicant is statutorily ineligible for adjustment to permanent resident status, as he failed to reside continuously in the United States, in an unlawful status, from before January 1, 1982 through May 4, 1988, as set forth at 8 C.F.R. § 245a.11(b).

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