



U.S. Citizenship
and Immigration
Services

L2



FILE: [Redacted]

Office: Chicago

Date: OCT 13 2005

IN RE: Applicant: [Redacted]

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:



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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant was a lawful F-1 student through the date of his graduation in May 15, 1982 and, therefore, did not reside unlawfully in the United States since prior to January 1, 1982 through such date.

On appeal, counsel asserts that the applicant violated his F-1 student visa status by engaging in unauthorized employment prior to January 1, 1982 and consequently he did reside unlawfully in the United States for the requisite period. Counsel provides copies of previously submitted documents in support of the appeal.

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 January 27, 1981 as a F-1 student attending the University of Illinois at Champaign-Urbana. The record shows that the applicant remained a F-1 student at this institution through the date of his graduation on May 16, 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 up until May 16, 1982 and, therefore, did not reside unlawfully in the United States since prior to January 1, 1982. 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.

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 Immigration and Nationality Act (INA) on August 31, 1990. At part #29 of the Form I-687 application where applicants who entered the United States with a nonimmigrant visa were asked if they had violated their status and the manner in which they had violated such status, the applicant indicated that he had violated his nonimmigrant F-1 student status but failed to specify the manner in which he had done so.

At part # 34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed St. John's Catholic Chapel at [REDACTED] from January 1981 to August 31, 1990, the date the Form I-687 application was submitted. The applicant submitted a letter dated August 24, 1990 that is signed by [REDACTED] Assistant Chaplain, and bears the letterhead "The Newman Foundation at the University of Illinois St. John's Catholic Chapel Catholic Student Center [REDACTED] [REDACTED] stated in pertinent part:

This is to certify that [the applicant's name] [REDACTED] has been associated with our church since 1981 [REDACTED] has lived in our area and is known to the staff at the Newman Center.

Thomas is an upstanding member of our community and an active participant in our church. He has assisted us with various tasks around our Newman Center. I have always found him to be of sound character and personally honest.

I feel that Thomas is a wonderful person and I would glad to be a reference for him. Please feel free to contact me at the above address.

At part #36 of the Form I-687 application where applicant were asked to list employment in the United States since the date of first entry, the applicant listed employment as a library aide at the main library of the University of Illinois in Urbana, Illinois from January 1981 to June 1982. However, it must be noted that F-1 students were and are currently permitted to engage without any authorization in no more than twenty hours per week of on-campus employment during the academic year and full-time on-campus employment when school is not in session under 8 C.F.R. § 214.2(f)(9)(i). Therefore, the fact that the applicant was employed at

the main library of the University of Illinois while he was attending this institution cannot be construed as a violation of his F-1 student status.

The record shows that the applicant subsequently filed his Form I-485 LIFE Act application with the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on December 28, 2001. The applicant included copies of previously submitted documentation as well as the following new and relevant documents: two photocopied payroll statements dated May 29, 1981 and June 3, 1981, respectively, which purportedly reflect wages earned by the applicant from [REDACTED]

Both in response to the notice of intent to deny and on appeal, counsel asserts that the applicant violated his F-1 student visa status by engaging in unauthorized off-campus employment beginning in January of 1981 for Newman Hall. Counsel contends the applicant's off-campus employment was specifically prohibited under 8 C.F.R. § 214.2(f)(9)(ii), and that he was in an unlawful status prior to January 1, 1982. However, as noted above, the applicant listed his work as a library aide at the main library of the University of Illinois as his only employment in the period from January 1981 to June 1982 at part #36 of the Form I-687 application. Neither counsel nor the applicant provides any explanation as to why the claim of employment for Newman Hall was not listed on the Form I-687 application or why documentation reflecting such employment was not included with the Form I-687, but instead was submitted for the first time with the Form I-485 LIFE Act application over eleven years later.

Further, the letter signed by [REDACTED] and bearing the letterhead "The Newman Foundation at the University of Illinois St. John's Catholic Chapel Catholic Student Center [REDACTED]" contains no indication that the applicant was ever employed by this entity in any manner, but rather characterizes his association as member, participant, and volunteer at the church. This is reinforced by the fact that the applicant listed his association with St. John's Catholic Chapel at [REDACTED] in Champaign, Illinois beginning in January 1981 at part # 34 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc. Even if it were determined that the applicant worked for the Newman Foundation as claimed, such employment cannot be considered to violate any provision of 8 C.F.R. § 214.2(f)(9) as the letterhead for the Newman Foundation identifies it as a component part of the University of Illinois that is located on school premises and provides services to the school's students. Moreover, the record contains no evidence, such as a Social Security Administration earnings statement or computer printout, that would warrant a finding that the applicant's alleged 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.

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.

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