



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 02 234 60979

Office: Chicago

Date: JUN 30 2006

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:



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, Chief
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. This matter will be remanded for further action and consideration.

The district director concluded that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, and, therefore denied the application.

On appeal, counsel asserts that the applicant has submitted sufficient documentation to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) establishing his continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

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. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

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).

The applicant made a claim to class membership 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 (Act) on September 19, 1990. On his Form I-687 application, the applicant indicated that he was admitted to the United States as an F-1 student in September 1980, and that he subsequently violated his F-1 student status. However, the applicant failed to specify either the date or manner in which he violated his F-1 student status and failed to submit any relevant evidence to corroborate this claim. Subsequently, on May 22, 2002, the applicant submitted his Form I-485 LIFE Act application.

In an attempt to establish continuous unlawful residence since before January 1, 1982, the applicant furnished evidence including an affidavit as well as photocopies of the following documents: two postmarked envelopes, a State of Washington Temporary Driver's License, pages from his Nigerian passport, medical records, an application for a Social Security number, correspondence, utility bills, receipts from Walla Walla Community College, and airline tickets.

On December 29, 2003, the district director issued a notice of intent to deny to the applicant informing him of the Service's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Specifically, the district director observed that the applicant had submitted only affidavits and other documentation in support of his claim of residence for the requisite period. However, pursuant to *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989), affidavits in certain cases *can* effectively meet the preponderance of evidence standard, and the district director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation. Moreover, the district director failed to acknowledge that the applicant had submitted contemporaneous documents

to support his claim of residence and to address such evidence in the notice. In addition, it must be noted that in response to the notice the applicant included copies of previously submitted documents as well as photocopies of the following new evidence: tax returns, utility bills, paycheck stubs, a City of Chicago, Illinois, Temporary Public Vehicle Chauffeur's Permit, medical records, a certificate of qualification, rent receipts, a receipt from the United States Department of State, and pre-printed directions to an establishment where the applicant formerly worked. Therefore, the district director's conclusions regarding the credibility of the applicant's claim of residence and the sufficiency of his supporting documentation as expressed in the notice of intent must be considered as an inadequate basis to deny the application.

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 Act that were most recently in effect before the date of the enactment of this [the LIFE] 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 contains sufficient evidence to establish that the applicant entered the United States on September 28, 1980 at New York, New York as an F-1 student to attend the Walla Walla Community College in Walla Walla, Washington. Consequently, a determination must be made as to whether the applicant's period of authorized stay as an F-1 student had expired through the passage of time prior to January 1, 1982. If it is concluded that the applicant's authorized stay had not expired prior to

January 1, 1982, then it must be determined whether the applicant was nevertheless in an unlawful status that was known to the Government as of that date.

The case will be remanded for the purpose of issuing a notice of intent and entering a new decision. The new decision, if adverse, shall be certified to this office for review.

ORDER: This matter is remanded for further action and consideration pursuant to the above.