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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: MSC 02 162 62743 Office: DETROIT Date: JAN 08 2007

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. Any further inquiry must be made to that office.

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, Detroit, Michigan, 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 he had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988.

On appeal, counsel argues that the applicant's legal entry of June 20, 1983 did not interrupt his continuous unlawful presence as he was returning to an unrelinquished unlawful residence.

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 (the Act) 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 applicant has indicated on his Form I-687 application and in affidavits that he entered the United States on September 2, 1981 with a B-2 nonimmigrant visa. The applicant also indicated that he had continuously resided in the United States since that time until his departure to Bangladesh on May 15, 1983. The applicant asserted that he re-entered the United States on June 20, 1983 with a B-2 nonimmigrant visa.

The director determined that since the applicant "entered the United States in a legal status between January 1, 1982 and May 4, 1988, he did not meet the statutory requirements for permanent resident status under the LIFE Act.

On appeal, counsel asserts, "[t]he [applicant] was in continuous unlawful status since December 1981." Counsel further asserts that the applicant violated his status by working without authorization in December 1981.

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 8 C.F.R. § 245a.11(b). **Authorized stay with a visitor's visa is generally for six months. In the applicant's case, that would extend to February 1982.** Counsel does not provide any evidence such as the

applicant's Form I-94, Arrival/Departure Record or a passport, which would indicate that the applicant's authorized stay was less than six months. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is determined that the applicant was in a lawful nonimmigrant status prior to January 1, 1982, and therefore he failed to establish he was continuously residing in the United States in an unlawful status since before January 1, 1982. Accordingly, the applicant has failed to establish that he 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.