U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 19 2004

IN RE: Applicant: [redacted]

PETITION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[redacted]

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

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DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that her authorized period of stay as a nonimmigrant expired through the passage of time prior to January 1, 1982 or that she otherwise resided in an unlawful status which was known to the Government as of such date.

On appeal, counsel asserts that the Government had notice that the applicant was residing unlawfully in the United States because her parent's listed her as a dependent on their tax returns.

An applicant for temporary residence 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 the date the application is filed. 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 <u>or</u> that the alien's unlawful status was known to the Government as of such date. Section 245A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1255a(a)(2).

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).

Eligibility also exists for an alien who would otherwise be eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence. 8 C.F.R. § 245a.2(b)(9). An alien described in this paragraph must receive a waiver of the inadmissibility charge as an alien who entered the United States by fraud. Section 212(a)(19) of the INA, 8 U.S.C. § 1182(a)(19); 8 C.F.R. § 245a.2(b)(10).

The applicant is a female native and citizen of Mexico born November 12, 1966. The record reflects that the applicant was admitted to the United States on December 28, 1981 as a B-2 nonimmigrant visitor with a period of authorized stay until January 2, 1982. The record further reflects that the applicant has been present in this country since such date.

The director determined that the applicant's authorized stay clearly did not expire through the passage of time prior to January 1, 1982. The director also determined that the applicant failed to establish that any unlawful status was known to the Government as of January 1, 1982. Therefore, the director denied the application.

Counsel's assertion that the Government had notice that the applicant was residing unlawfully in the United States because her parent's listed her as a dependent on their tax returns is not persuasive. While the record contains the applicant's parents' federal tax return and corresponding schedules listing her as a dependent for the 1981 tax year, these tax documents are unsigned and contain no indication that such documents were actually submitted to a government agency. Furthermore, complete tax documents for the 1981 tax year would only be available after the end of the tax year on December 31, 1981 and the deadline for the filing of federal tax returns for the 1981 tax year was <u>April 15, 1982</u>. Even if the applicant's parents had submitted their federal tax return for the 1981 tax year to a government agency, the record clearly reflects that the applicant was in lawful status prior to and as of January 1, 1982. The applicant has failed to put forth any other circumstances that would lead to a conclusion that she was in an unlawful status as of such date.

Therefore, the applicant's lawful status as of January 1, 1982, precludes her from establishing that an unlawful status was known to the Government as of such date.

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 she 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 Act, 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.