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

L-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2004

IN RE: Applicant: [redacted]

APPLICATION: 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: Self-represented

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 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

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

The director denied the application because the applicant neither demonstrated that his authorized stay as a student expired prior to January 1, 1982 or that he was otherwise in an unlawful status which was known to the Government as of January 1, 1982.

On appeal, the applicant points out that he dropped his classes in the spring of 1979 and received no credit for that semester. He also reiterates that he worked without authorization on an ice cream truck that he owned.

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 or that the alien's unlawful status was known to the Government as of such date. Section 245A(a)(2) of the Act, 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 823 (Comm. 1988).

The applicant was admitted to the United States as an F-1 nonimmigrant student on November 14, 1977, with stay authorized to January 2, 1978, in order to attend ELS Language Center. A replacement Form I-94 Arrival/Departure Record issued on January 24, 1984 indicates the applicant's F-1 authorized stay had been extended to December 31, 1983 to attend Utah State University. The applicant's authorized stay had not expired by January 1, 1982. Therefore, we must determine whether the applicant was nevertheless in an unlawful status which was known to the Government as of that date.

On his application, the applicant indicated that he had violated his status by working. He provided evidence that a commercial vehicle (ice cream truck) was registered to him in 1985 and 1986. According to the applicant, he sold ice cream from that truck as early as 1980, when he was robbed while doing so. He provided photographs of him and the truck.

There is no actual evidence that the applicant was working prior to January 1, 1982. If he was, it is possible he had authorization from the U.S. Immigration and Naturalization Service (INS) to do so. However, even if it were to be concluded that he worked without authorization prior to January 1, 1982, there is no evidence or even implication that the Government was aware of such employment. No tax or social security records relating to such employment have been furnished.

The applicant indicates he dropped all of his courses at Compton Community College (his second school) in the spring of 1979, and therefore fell into an unlawful status. He provides transcripts as evidence.

Nevertheless, in a letter dated March 17, 1980, the Foreign Student Advisor at Compton C.C. stated the applicant had enrolled for the spring 1978 semester, had continued as a full-time student since that time, and was expected to complete the requirements for the Associate Degree in Science by June 20, 1980. Further, a school official at Compton C.C. indicated on the Form I-538 application for school transfer which the applicant completed on June 20, 1980 that the applicant had completed his course of studies at that school. The official did not check off either of the other two blocks used when a student is taking less than a full course of studies or has terminated his attendance.

The school the applicant was transferring to, San Jose State University, indicated on Form I-20, Certificate of Eligibility, that the applicant had successfully completed two years in a U.S. institution, which was Compton C.C. The record further indicates that INS issued the replacement Form I-94 to the applicant on January 24, 1984, finding that he had been authorized to attend Utah State University, his fourth school, after having attended San Jose State University. There is no indication that INS was advised by any school official that the applicant violated his status by not making sufficient progress toward a degree.

In this case it is clear the authorized stay of the applicant did not expire prior to January 1, 1982. Moreover, the applicant has not established that he was in unlawful status which 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.