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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L2

[Redacted]

FILE:

[Redacted]

Office: Los Angeles

Date: JAN 10 2005

IN RE:

Applicant:

[Redacted]

PETITION: 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:

[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

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. In rendering this determination, the district director concluded that the applicant was in legal status for the first few months of LIFE legalization and, therefore, determined the applicant was statutorily ineligible to adjust to permanent residence under the provisions of the LIFE Act. In addition, the district director also found that the applicant had far exceeded the forty-five (45) day limit for single absences from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1).

On appeal, counsel for the applicant asserts the applicant has continuously resided in the U.S. since 1981, and indicates that he has submitted a requested for a copy of the applicant's legalization file pursuant to the Freedom of Information Act (FOIA), along with an additional 90-day extension after the implementation of such request in order to file a response. However, there is no indication in the record of proceedings that such FOIA request was ever filed by counsel. Nor has counsel provided any further statement or documentation in support of the appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, and his 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. 823 (Comm. 1988).

The record shows that that the applicant first entered the United States with a valid nonimmigrant F-1 student visa on September 5, 1980, which was thereafter extended through March 1982. Clearly, the applicant was not in an unlawful status through the passage of time. However, it is still necessary to determine whether or not the applicant nevertheless violated her lawful status as an F-1 non-immigrant visitor prior to this date, and whether such unlawful status was known to the Government as of January 1, 1982.

Congress provided only two ways in which an applicant who had been admitted as a nonimmigrant could establish eligibility for adjustment to permanent residence under section 1104(C)(2)(B)(ii) of 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 which 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. At the same time, the LIFE Act specifies that the unlawfulness had to have been known to the Government as of January 1, 1982.

The applicant claims to have violated her F-1 status prior to January 1, 1982 by engaging in unauthorized employment. In support of her claim, the applicant has provided an affidavit from [REDACTED] indicating she was employed as a secretary at that firm from April 21, 1981 to April 15, 1985. Nevertheless, even assuming that such employment was in violation of the terms of the applicant's status, the applicant has provided no evidence such as Social Security earnings or income tax returns to indicate that, as of January 1, 1982, the Government was *aware* of any unauthorized or unlawful conduct on her part. As such, the applicant has failed to establish that she was in an unlawful status which was known to the Government as of January 1, 1982.

It was also determined in the notice of intent to deny that the applicant had far exceeded the forty-five (45) day limit for single absences from the United States during this period. "Continuous unlawful residence" is defined at 8 C.F.R. § 245a.15(c)(1), as follows: An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded *forty-five (45) days*, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.

The record indicates that, on the occasion of her adjustment interview on May 12, 1984, the applicant stated under oath and in the presence of an examining CIS officer that, in late 1983, she departed the U.S. for Brazil, where she remained until 1986 when she returned to the U.S. In response, the applicant acknowledges this absence, while emphasizing that she was compelled to return to her native Brazil at this time in order to resolve a potentially violent family altercation. While this shows that there may well be a valid basis for the applicant's decision to leave for Brazil, it also indicates that it was intended for the applicant to remain outside of the United States for an indefinite period, *i.e.* until a volatile family dispute had been diffused. The applicant has, therefore, failed to provide any clear evidence of an intention on her part to return to the U.S. within 45 days of her departure. Accordingly, it cannot be concluded that an emergent reason "which came suddenly into being" delayed or prevented his return to the United States beyond the 45-day period.

The applicant has, therefore, failed to establish that she 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. Given this, she 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.