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

U.S. Citizenship and Immigration Services

L2

FILE: [redacted] Office: Baltimore Date:

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: 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 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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) 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 from before January 1, 1982 through May 4, 1988. The district director based his decision on the conclusion that the applicant lawfully entered the country with a F-1 student visa on September 5, 1982 and again on January 20, 1985.

On appeal, the applicant asserts that he initially entered the United States with a B-2 visitor's visa in June of 1981, and that he has continuously resided in the United States in an unlawful status since such date. The applicant acknowledges that he subsequently reentered the country with a F-1 student visa and that he violated the terms of his visa by engaging in unauthorized employment for cash. The applicant contends that his illegal status was known to the Government because he received a Form W-2, Wage and Tax Statement, and filed a tax return with the Internal Revenue Service in 1988. The applicant submits documents in support of the appeal.

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.
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> (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.

As cited above, pursuant to section 1104(c)(2)(B)(i) of the LIFE Act, 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 the LIFE Act shall apply to determine whether an alien maintained continuous unlawful residence in the United States. Therefore, 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)(6)(C) [previously numbered Section 212(a)(19)] of the INA, 8 U.S.C. § 1182(a)(6)(c); 8 C.F.R. § 245a.2(b)(10).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The district director concluded that the continuity of the applicant's prior unlawful residence in this country had been broken when he entered the country with a F-1 student visa on September 5, 1982 and again on January 20, 1985. The district director did not determine whether the applicant's claim of entry prior to January 1, 1982 and continuous unlawful residence was valid, but rather focused on the fact that the applicant was apparently in lawful nonimmigrant F-2 status when he entered the United States on September 5, 1982 and January 20, 1985. No consideration was given to the applicant's claim that he established an unlawful residence in this country prior to January 1, 1982, and then fraudulently procured the F-1 student visas to return to his unrelinquished and unlawful residence in the United States. The issue in these proceedings is whether the applicant continuously resided in this country in an unlawful status for the requisite period and the district director failed to consider this issue in its entirety in denying the application. As such, this issue must now be examined to determine the applicant's eligibility for adjustment to permanent residence under section 1104(c)(2)(B) of the LIFE Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS,* 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687 application on February 22, 1991. On the Form I-687 application, the applicant indicated that he entered the United States with a B-2 nonimmigrant visitor's visa that had been issued on May 28, 1981, and that he was granted a period of authorized stay until August 28, 1981. At part #36 of the Form I-687 application, where aliens were asked to list all employment in the United States, the applicant indicated that he violated the terms of the B-2 visitor's visa by engaging in unauthorized employment as a housekeeper from July 1981 to an unspecified date in 1983. The applicant indicated that subsequently entered this country with a F-1 student visa that had been obtained on September 2, 1982, and that he also violated the terms of this visa by engaging in unauthorized employment.

The record shows that the applicant included photocopied pages of his Nigerian passport with the Form I-687 application. The passport reflects that the applicant was issued a B-2 visitor's visa in Lagos, Nigeria on May 28, 1981 that was valid for one entry into the United States through August 28, 1981. The record contains a photocopy of the applicant's Form I-94, Record of Arrival/Departure, the front portion of which shows that he entered the United States with this B-2 visitor's visa on June 30, 1981. The back portion of the Form I-94 reflects that the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) subsequently granted the applicant's request to reclassify his visa status to that of a F-1 student attending the Community College of Baltimore on September 29, 1981. The applicant was granted a period of authorized stay as an F-1 student until June 30, 1983 and was not authorized to engage in employment. Clearly, the applicant's authorized stay did not expire through the passage of time prior to January 1, 1982.

Now it must be determined whether the applicant had violated his lawful status initially as a B-2 visitor and then a F-1 student prior to January 1, 1982, and whether such unlawful status was known to the Government as of this date. On his Form I-687 application, the applicant indicated that she violated his visa status by engaging in unauthorized employment as a housekeeper beginning in July 1981. In support of this claim, the applicant submitted an employment letter signed by [redacted] who indicated that he employed the applicant to mow the lawn and do house work from the summer of 1981 to 1983. While the applicant may have been in an unlawful status by working without authorization prior to January 1, 1982, the record contains no evidence, such as a Social Security Administration earnings statement or computer statement, that such unlawful status was known to the Government as of this date pursuant to *Matter of P*, 19 I. & N. 823 (Comm. 1988). Thus, we cannot conclude the applicant was in an unlawful status which was known to the Government as of January 1, 1982, as a result of unauthorized employment.

The applicant's contention that his illegal status was known to the government because he received a Form W-2, Wage and Tax Statement, and filed a tax return with the Internal Revenue Service in 1988 is noted. However, the holding reached in *Matter of P, supra.*, requires 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 applicant's status in the United States was unlawful. Clearly the applicant's receipt and filing of tax documents in 1988 occurred well after January 1, 1982. The applicant has failed to establish that his authorized stay expired prior to January 1, 1982. In addition, the applicant has failed to demonstrate that he was otherwise in an unlawful status that was known to the Government as of January 1, 1982. The applicant has, therefore, failed to establish that he 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.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.