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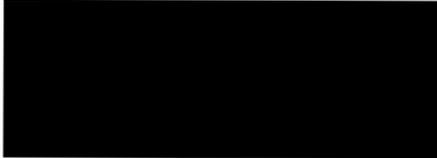
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SACRAMENTO

Date: **MAY 04 2006**

MSC 02 143 62948

IN RE:

Applicant:



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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant was in a lawful status as a J-1 nonimmigrant exchange visitor during the requisite period. The district director further determined that the applicant had failed to fulfill his two-year foreign residence requirement of section 212 (e) of the Immigration and Nationality Act (the Act). Accordingly, the director denied the application.

On appeal, the applicant asserts that he is not subject to the foreign residence requirement, and has established eligibility pursuant to the LIFE Act. The applicant states that the director did not consider his sworn affidavit dated April 5, 1990, his J-1 visas stipulations made by immigration inspectors and an American Vice Consul, and the letter dated October 9, 1984 from the American Embassy Consular Section in Kathmandu, Nepal. The applicant provides copies of additional documents along with copies of documents previously submitted in support of the appeal.

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. 8 C.F.R. § 245a.11(b).

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).

Section 1104(c)(2)(B) of the LIFE Act states:

(ii) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien’s period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien’s unlawful status was known to the Government as of such date.

(iii) Exchange Visitors – If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) of such Act or has fulfilled that requirement or received a waiver thereof.

The regulation at 8 C.F.R. § 245a.15(d)(iii) defines nonimmigrant exchange visitor, as an eligible alien who was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Act), who entered the United States before January 1, 1982, and who:

- (A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or
- (B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or
- (C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

The applicant became subject to the foreign residence requirement because his initial stay in the United States was funded by the Agency for International Development.

The record reflects that the applicant indicated on his Affidavit for Determination of Class Membership dated April 5, 1990 that he had violated his lawful status by engaging in unauthorized employment in 1983.

Regarding the claim of unlawful employment, the applicant has not provided any evidence of such employment. Assuming, *arguendo*, the applicant had in fact undertaken such employment and assuming that employment was in violation of the terms of the applicant's status, the applicant has provided no evidence to indicate that the government was *aware* of any unauthorized or unlawful conduct on the part of the applicant. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the applicant's assertion must be viewed as an attempt to show that he violated his lawful status in order to obtain the benefit being sought. There is no indication that the applicant was in an unlawful status, due to unlawful employment, which was known to the government as of January 1, 1982.

Along with the LIFE application, counsel submitted a brief indicating that the applicant had engaged in unauthorized employment and, therefore, violated his J-1 nonimmigrant status. Counsel further indicated that the applicant was not subject to the two-year foreign residence requirement based on the entry indicated in his passport and a letter from Consul, Charles M. Parish, Jr., at the American Embassy in Kathmandu, Nepal.

The record contains a copy of the applicant's Nepalese passport which reveals that on July 29, 1981, the applicant was issued a J-1 multiple entry nonimmigrant visa valid until July 29, 1982. The record reflects that on August 2, 1981, the applicant was lawfully admitted into the United States as a J-1 nonimmigrant. An amended Form IAP-66, Certificate of Eligibility for Exchange Visitor indicated the applicant's authorized period of admission from August 2, 1981 through August 1, 1982. Thus, the applicant has failed to demonstrate that his authorized stay expired prior to January 1, 1982. The record also contains:

- A Form IAP-66, which was endorsed by the Stephen J. Blake, American Vice Consul in Kathmandu, Nepal on December 26, 1984. The Form IAP-66 contains an admission stamp indicating that the applicant was admitted into the United States as a J-1 nonimmigrant on December 30, 1984, his authorized period of admission was valid through July 31, 1985, and he was subject to the two-year residence requirement. It is noted that the applicant indicated on this Form IAP-66 that he had previously entered the United States as an exchange student from January 1983 to August 1984.
- A copy of the applicant's Nepalese passport, which reveals that on November 25, 1987, the applicant was issued a J-1 multiple entry nonimmigrant visa valid until July 31, 1988. The record reflects that on November 28, 1987, the applicant was lawfully admitted into the United States as a J-1 nonimmigrant. The visa indicated that the applicant was not subject to the two-year foreign residence requirement.
- A letter dated November 8, 1989 from Consul Charles M. Parish, Jr., at the United States Embassy in Kathmandu, Nepal regarding a request made by the applicant for verification of his two-year residence requirement. Mr. Parish asserted that the applicant was not subject to the two-year residence requirement. Mr. Parish also asserted that the applicant's Form IAP-66 endorsed

by vice consul Alcy R. Frelick in Kathmandu, at the time his visa was issued, was correctly checked.

- School transcripts from the Tuskegee Institute in Alabama, which reflected the applicant's attendance during the 1981-1982 academic year.

School transcripts from the University of California, Davis, which reflected the applicant's attendance during the spring and fall semesters of 1983; the spring semester of 1985; the 1985-1986 academic year; the 1986-1987 academic year; and the 1987-1988 academic year.

In a notice dated July 14, 2003, the director requested that the applicant present evidence that he had fulfilled his two-year foreign residence requirement or that he had received a waiver for his first J-1 period in the United States. Counsel, in response, asserted that the applicant believed he received a waiver for his first J-1 at the time he was seeking his second J-1 visa in 1984. Counsel submitted a letter dated October 9, 1984 purportedly to the United States Information Agency in Washington, D.C. regarding a 212(e) waiver application on behalf of the applicant. The letter, however, raises questions of its authenticity as it was not on a letterhead, and contained neither a signature nor the embassy's seal. There is no indication a waiver was granted.

In a Notice of Intent to Deny issued on April 1, 2004, the director advised the applicant he had not submitted any evidence that he had fulfilled his two-year residence requirement or that it had been waived. The applicant, in response, asserted that he believed he received a waiver. The applicant stated, "In October, 1984 Mr. Blake forwarded my waiver application for my first J-1 to Washington D.C. and later issued my second J-1 in December, 1984."

Again, there is no indication that the foreign residence requirement was ever waived. Also, it does not appear that the applicant resided in his native country for two years before returning to the United States in 1987.

Furthermore, the fact remains that the applicant resided in the United States *in a lawful status* as a J-1 exchange visitor since before January 1, 1982 through May 4, 1988. The applicant has, therefore, failed to establish that he resided in the United States in continuous unlawful status from before January 1, 1982 through May 4, 1988, as required under sections 1104(c)(2)(B)(i) and (ii) of the LIFE Act. Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

Beyond the decision of the director, it is noted that the applicant indicated, on his Form I-687 application, he had been absent from the United States from July 1982 to November 1982, August 1984 to November 1984, and during the month of October 1987. The applicant's absences in 1982 and 1984 far exceeded the 45-day limit for a single absence, as well as the 180-day aggregate total for all absences as specified in 8 C.F.R. § 245a.15(c)(1). The AAO, however, need not make a determination as to whether the applicant's prolonged absences were due to an "emergent reason" as the applicant is ineligible for the benefit being sought as he was in a lawful status as a J-1 exchange visitor during the requisite period.

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