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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE: [Redacted]
MSC 02 087 60492

Office: SACRAMENTO

Date: **MAY 23 2006**

IN RE: Applicant: [Redacted]

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:

[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, 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 (Sacramento), 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 a lawful F-1 student from 1978 to 1982 and, therefore, did not reside unlawfully in the United States prior to January 1, 1982 through May 4, 1988. The district director therefore concluded that the applicant was ineligible to adjust to permanent residence under the provisions of the LIFE Act and denied the application.

On appeal, counsel asserts that the applicant did reside unlawfully in the United States prior to January 1, 1982 through May 4, 1988, because he violated his F-1 student visa status by engaging in unauthorized employment prior to January 1, 1982. Counsel submits a brief on appeal.

To be eligible for adjustment to permanent resident status under the LIFE Act the applicant must establish his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as 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. 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.

The applicant is a class member in a legalization class-action lawsuit and as such, filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA), on August 23, 1990. The applicant stated that he first entered the United States on December 5, 1978

pursuant to an F-1, nonimmigrant student visa. The applicant further stated that he violated his F-1 status by engaging in unauthorized work and by overstaying his visa. The applicant indicated that prior to 1982, he worked part-time jobs as a parking attendant from 1979 to 1980, and as a motel, restaurant, and pizza restaurant desk clerk, bus boy and delivery boy from 1979 to 1981.

The record reflects that the applicant was approved for an F-1 visa that was valid effective December 5, 1978, and that he entered the United States on December 23, 1978 to attend school in the Santa Barbara School District. The record also reflects that the applicant was approved for an F-1 visa that was valid from May 31, 1983 to May 31, 1984 to attend Colorado State University.

The record contains evidence that the applicant attended school in the Santa Barbara High School District in 1979, moved to Colorado in January 1980, and graduated from Rocky Mountain High School in Fort Collins, Colorado in May 1980. The evidence also reflects that the applicant attended the University of Southern Colorado beginning in the fall of 1980 and transferred to Colorado State University in the fall of 1982, graduating with a Bachelor of Science degree in December 1989.

The applicant submitted a copy of a Form 1099-NEC, Nonemployee Compensation, from ABA Enterprises, Inc., reflecting that the applicant received \$363.25 in nonemployee compensation in 1979. The applicant also submitted a letter from Jim Baker of K & L Associates, who stated that the applicant was employed as a sales associate in his store from June 1 to June 16, 1981, earning \$326. The record also contains a Social Security Administration earnings statement that reflects that the applicant began earning wages subject to Social Security withholding taxes in 1982.

Counsel asserts on appeal:

The fact that [the applicant] engaged in unauthorized employment and obtained a Social Security card so that Forms IRS 1099 in 1979 and Forms W-2's through 1989 were filed with IRS demonstrates that the Government, as a whole, had sufficient evidence, "when considered in its totality, leaves no doubt that as of January 1, 1982, there existed sufficient information in the files of the United States Government to warrant a conclusion that the applicant was in the United States in an unlawful status." *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988) and *Ayuda, Inc. v. Reno*, 7 F. 3rd 246 (D.C. Cir. 1993).

The director concluded that the mere existence of a Form 1099-NEC is not, without more, credible evidence that the applicant was in an unlawful status that was known to the Government as of January 1, 1982, as a result of unauthorized employment. We concur. The applicant submitted no evidence that this Form 1099-NEC or other evidence of employment prior to 1982 was ever filed with the Internal Revenue Service. We note further, that the applicant did not indicate on his Form I-687 that he worked for ABA Enterprises, Inc. or for K & L Associates. We cannot conclude that the applicant was in an unlawful status that was known to the Government as of January 1, 1982, as a result of unauthorized employment.

The statements of counsel on appeal have been considered. Nevertheless, in this case the applicant has failed to establish that his authorized stay expired prior to 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. Accordingly, the applicant is ineligible for adjustment to permanent resident status under section 1104 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 establish having resided in continuous unlawful status in the United States from prior to January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis as well.

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