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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

**APR 02 2009**

MSC 02 001 63814

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The director denied the application because the applicant failed to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982, through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act. The director found that the applicant was in lawful status during the period. The director determined that the applicant entered in lawful F-1 student status in 1980 and failed to prove that he violated this status by January 1, 1982.

On the initial appeal from the director's decision, applicant's former counsel asserted that the applicant had demonstrated that he accepted employment without authorization beginning in January 1981, and that this status violation was known to the government as of January 1, 1982.

On May 29, 2007, the AAO issued a notice to the applicant indicating that the appeal would be dismissed unless the applicant offered credible evidence showing that he accepted employment in violation of his F-1 status prior to January 1, 1982, and that this violation was known to the government as of that date. The notice also informed the applicant that the appeal would be dismissed on the ground that the applicant is inadmissible under section 212(a)(6)(C) of the Immigration and Nationality Act (the ACT) unless he offered substantial evidence from credible sources rebutting evidence in the record that the applicant previously entered a marriage with a U.S. citizen for the sole purpose of obtaining immigration benefits. It was also noted that the applicant had failed to disclose this marriage on a subsequent application and had submitted other inconsistent information concerning his family members on previous applications.

In response to the above notice, counsel submits as evidence of the applicant's employment a certificate captioned "Anniversary Recognition" of the applicant's 25 years of employment at [REDACTED] earning statements for December 1981 and December 1982, W-2 forms for 1983 and 1986, tax returns for 1987 and 1988, and an interest income statement for 1987. The record also contains a declaration from [REDACTED] in which she states that the applicant was hired by the company (then known as [REDACTED]) on January 26, 1981. Counsel also asserts that the applicant did not enter his previous marriage for the sole purpose of obtaining immigration benefits, and that any statements to the contrary by his ex-wife are false statements made by "a disgruntled" divorced woman. Counsel contends that the tax returns and other evidence in the record show that the marriage was bona fide. Counsel also asserts that the applicant has made no other false statements and submits additional documentation to show that the applicant's parents have not resided in the United States.

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 . . . .

Section 1104(c)(2)(D) of the LIFE Act provides in pertinent part:

Admissible As Immigrant – The alien must establish that the alien –

- (i) is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act . . . .

Section 212(a)(6)(C) of the Immigration and Nationality Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

A LIFE Legalization applicant must provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. *See* 8 C.F.R. § 245a.14. In this case the applicant applied for such class membership by submitting an Affidavit of Determination of Class Membership, accompanied by a Form I-687 “Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act),” dated December 6, 1990. On October 1, 2001, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application). The applicant must also qualify as a subclass member pursuant to the terms of the *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration, et al.* Stipulation of Settlement ( [REDACTED] ) (*NWIRP Settlement Agreement*), as stated below.

All persons who entered the United States in a non-immigrant status prior to January 1, 1982, who are otherwise prima facie eligible for legalization under section § 245A of the INA, 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below, and who . . . . was denied or whose temporary resident status was terminated, where the INS or CIS action or

inaction was because INS or CIS believed the applicant had failed to meet the “known to government” requirement or the requirement that s/he demonstrate that his/her unlawful residence was continuous.

Pursuant to the *NWIRP Settlement Agreement*, a person who violated the terms of their nonimmigrant status prior to January 1, 1982, in a manner known to the government includes those for whom documentation or the absence thereof existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982 in a manner known to the government.

The issue in this proceeding is whether the applicant was in unlawful status during the requisite period and that the government was aware of his unlawful status. Although the evidence, particularly the tax records, shows that the government knew of the applicant’s employment by December 1981, the applicant has failed to demonstrate that this employment was in violation of his F-1 status and that the government was aware of this violation. On appeal, the applicant’s former counsel asserted that the applicant’s employment could not have been authorized as 8 C.F.R. § 214.2(f)(9)(ii) prohibits off-campus employment in the first year of F-1 status. However, as the AAO observed in its notice to the applicant, the declaration from [REDACTED] does not conform with the requirements for employment verification letters found at 8 C.F.R. § 245a.2(d)(3)(i). The other evidence showing that the applicant was employed at [REDACTED] only demonstrates that the applicant was employed there as of December 1981, more than one year after his admission to the United States in F-1 student status on October 1, 1980. As 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, he is not eligible for adjustment of status under the LIFE Act.

The applicant is ineligible for adjustment of status under the LIFE Act for a second reason, that is because he is inadmissible under section 212(a)(6)(C) for having sought to procure an immigration benefit by fraud or willfully misrepresenting a material fact. The record contains evidence showing that the applicant married [REDACTED] on August 24, 1986. [REDACTED] then filed a Form I-130, Petition for Alien Relative, on the applicant’s behalf. Although this petition and the applicant’s corresponding Form I-485, Application to Register Permanent Residence or Adjust Status, were initially approved, the legacy Immigration and Naturalization Service (INS) issued to the applicant a notice of intent to rescind the approval after an investigation revealed that he married [REDACTED] for the sole purpose of obtaining immigration benefits. The record shows that [REDACTED] signed a sworn statement disclosing the true nature of the marriage, which was formally dissolved in May 1989. When the applicant failed to adequately respond to the above notice and to a request by the INS that he file a Form I-601, Application for Waiver of Grounds of Excludability, the Form I-130 petition and Form I-485 application were terminated. The AAO finds that there is sufficient evidence in the record to demonstrate that the applicant sought to procure an immigration benefit by fraud or willfully misrepresenting a material fact. He is, therefore, inadmissible under section 212(a)(6)(C) of the Act and ineligible for adjustment of status under section 1104(c)(2)(D) of the LIFE Act. The applicant’s fraud undermines the credibility of all his assertions.

The applicant has not established, by a preponderance of the evidence, that he continuously resided in the United States in an unlawful status since before January 1, 1982, through May 4, 1988, as required under section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Also, the applicant is inadmissible to the United States under INA § 212(a)(6)(C) for having sought to procure an immigration benefit by fraud or willfully misrepresenting a material fact. Accordingly, the applicant has not established eligibility to adjust status to Legal Permanent Resident under section 1104 of the LIFE Act.

The applicant is not eligible for adjustment to temporary residence status for the reasons stated above with each considered as an independent and alternative basis for denial.

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