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U.S. Citizenship  
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Services

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FILE:

MSC 01 307 60375

Office: CHICAGO

Date: FEB 04 2009

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. 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.

On appeal, counsel asserts that the applicant was unlawfully present in the United States from 1979 through 1984 due to unauthorized employment on a student visa. Counsel contends that the applicant's unauthorized employment was known to the government through filed income tax returns and social security statements. Counsel also contends that the applicant's continuous unlawful status was not broken when he returned to the United States on a student visa after a brief absence abroad.

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.

“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.

Although this term is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” The applicant has not submitted any evidence to establish that an emergent reason delayed her return to the United States.

An applicant for permanent resident status under section 1104 of the LIFE Act 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 through May 4, 1988. *See* § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant 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

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section 1104 of the LIFE Act. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.12(f). 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

A LIFE Legalization applicant must also 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 Support, accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated November 4, 1992. On August 3, 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 (Case No. [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.

The issue in this proceeding is whether the applicant continuously resided in an unlawful status in the United States from before January 1, 1982, through May 4, 1988. The documentation that the applicant submits in support of his claim to have resided in an unlawful status in the United States before January 1, 1982, through May 4, 1988, and that his status was known to the government, consists of the applicant’s social security earning statements, attestations from individuals claiming to know the applicant worked during the requisite period, and [REDACTED] employment record. The applicant The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The record includes a copy of the applicant’s passport. The passport contains an F-1 student visa, issued to the applicant on October 29, 1979. The record indicates that the applicant entered the United States on November 5, 1979, as an F-1 student. The applicant’s date of entry into the United States is not disputed. On appeal, counsel contends that the applicant was unlawfully present in the United States from 1979 through 1984 due to his unauthorized employment. The record contains an employment record from [REDACTED] c. The employment record indicates that the applicant was employed as a crew employee from January 2, 1980, through October 6, 1980. Counsel asserts that the applicant’s unauthorized employment was known to the government through filed income tax returns and social security statements. While the record does not contain relevant income tax returns, the record does contain two Social Security Administration (SSA) statements of earnings in the applicant’s name. The first itemized statement of earnings indicates that the applicant was employed by and earned income from [REDACTED] in 1980 and [REDACTED], from 1980 to 1983. The second statement of earnings indicates that the applicant earned income from 1980 to 1983 and in 1988.

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 therefore 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.

Based on the above evidence, the AAO finds that the applicant’s employment was a violation of his F-1 student visa and the applicant was in unlawful status in 1980. The applicant’s unlawful status was known to the government because he reported his earnings as evidenced by the SSA statement of earnings. Thus, the applicant was in unlawful status before January 1, 1982, and his unlawful status was known to the government.

The applicant has established his unlawful status in the United States during the requisite period. However, a remaining issue for determination is whether the applicant resided in the United States continuously throughout the requisite period. The record contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant on November 4, 1992. The applicant indicated that he departed the United States to Jordan due to a relative's death from August 16, 1987 to November 20, 1987. The record also includes a copy of the applicant's passport, which contains an F-1 visa issued on October 25, 1987, in Amman, Jordan. His passport contains an admittance stamp to the United States on November 20, 1987.

According to the regulations at 8 C.F.R. § 245a.15(c)(1), 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 applicant's absence of 96 days exceeded the permitted length of a single absence under the regulations. The applicant has not submitted any evidence to establish that an emergent reason delayed his return to the United States. Therefore, the applicant's absence interrupted his continuous residence, and he is found not to have resided in the United States continuously throughout the requisite period.

It is noted that the above F-1 visa did not interrupt the applicant's unlawful status during the requisite period. On appeal, counsel asserts that the applicant received the visa to return to his unrelinquished residency in the United States. An applicant who was present 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 remains eligible for adjustment to temporary residence status. *See* 8 C.F.R. § 245a.2(b)(9). Therefore, the AAO finds that the F-1 visa did not confer lawful status upon the applicant and the applicant remained in an unlawful status.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States from before January 1, 1980 through May 4, 1988, as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, 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.