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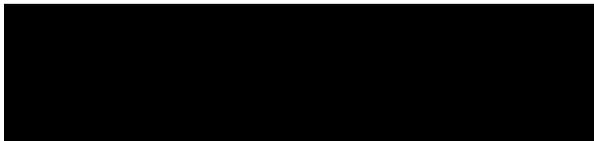
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
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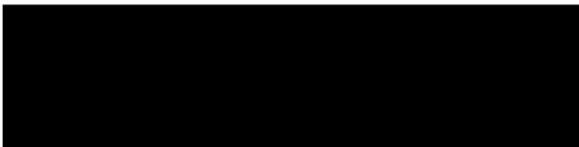
Office: LOS ANGELES, CA Date:

**MAR 17 2009**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and 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, Los Angeles, California. The decision 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 establish that, prior to January 1, 1982, the nonimmigrant visa on which he entered had expired through the passage of time, or that he had fallen out of status and his unlawful status had become known to the government before January 1, 1982. The record establishes that on December 25, 1981 the applicant entered the United States at San Ysidro, California as a B2, visitor for pleasure. In the rebuttal, the applicant indicated through counsel that he obtained his entry visa lawfully, and that he began working without authorization within one week of the December 1981 entry. Thus, he fell out of nonimmigrant status before January 1, 1982. He indicated that his unlawful status was known to the U.S. government. He made no direct claim that his unlawful status was known to the government before January 1, 1982. There is no evidence in the record that after the December 25, 1981 entry and before January 1, 1982, the government became aware that he violated his nonimmigrant status. In the notice of intent to deny (NOID), the director set forth the LIFE legalization regulation [8 C.F.R. § 245a.15(d)(2)] which indicates that if the applicant entered the United States before January 1, 1982 on a nonimmigrant visa which did not expire before January 1, 1982 through the passage of time, he must show that he violated his nonimmigrant status before January 1, 1982 and that his unlawful status was made known to the government before January 1, 1982. The director indicated that according to the record the applicant's nonimmigrant status did not expire through the passage of time before January 1, 1982, and that the applicant had not established that his unlawful status was known to the government before January 1, 1982. Therefore, she intended to deny the application. In the rebuttal, the applicant failed to establish or even to assert that after his December 25, 1981 entry and before January 1, 1982, a government agency became aware that he had violated his nonimmigrant status. Thus, the director denied the application for the reasons set forth in the NOID.

On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP).

NWIRP class members are defined, in relevant part, as:

1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –

....  
(B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible

for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members);

....

2. Enumerated Categories

- (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) 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.

NWIRP further provides that LIFE Act legalization applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudications standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that after his or her lawful entry and prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government in that, for example, documents and/or the absence of required documents (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) within the records of one or more government agencies, when taken as a whole, warrant a finding that the applicant was in an unlawful status prior to January 1, 1982 in a manner known to the government. Once the applicant makes such a showing, U.S. Citizenship and Immigration Services (USCIS) then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS fails to carry this burden, the settlement agreement stipulates at paragraph 8B that it will be found that the applicant's unlawful status was known to the government as of January 1, 1982. The settlement agreement states further that once USCIS finds that the applicant is a class member, USCIS shall follow the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant.

The applicant, according to his claims made in this proceeding, qualifies as a class member, Sub-class B, under the terms of this settlement agreement. Thus, the AAO has included the applicant's name in the list of pending NWIRP cases. See Exhibit 1, NWIRP Class Member Notice. The AAO applied the NWIRP adjudication standards to this case and determined the following. The applicant did not claim to have failed to file any required quarterly address reports or other reports with the government after his December 1981 entry and before January 1,

1982. Moreover, January 1, 1982 fell only one week after the December 1981 entry. As such, the applicant would not have been required to file any quarterly reports or other reports with a government agency prior to January 1, 1982. The applicant's Social Security records in the A-file indicate that he did not begin paying into Social Security until 1990. The applicant did submit a copy of what appears to be his 1981 tax return into the record.<sup>1</sup> However, there is no evidence that this return was filed. If it was filed, it is not reasonable to infer that the return would have been filed with the Internal Revenue Service after December 25, 1981 and prior to January 1, 1982. In the rebuttal, the applicant stated through counsel that when he "obtained his B-2 visa, he did so with the intent to enter temporarily," indicating that he obtained this entry visa in good faith. The applicant is not asserting in this matter that he entered in December 1981 on a B-2 visa obtained by fraud or mistake. Thus, after applying the NWIRP adjudication standards to this case, the AAO finds that the applicant has not demonstrated that his claimed unlawful status was known to the government as of January 1, 1982.

On November 28, 2006, the applicant filed the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), in this matter with the District Office, Los Angeles, California. On the Form I-290B, the applicant indicated through counsel that he would not file a brief or additional evidence. On this form at item 3, where the applicant is to state the basis of the appeal, counsel wrote the following:

The Service erroneously denied \_\_\_\_\_ application for legalization under the LIFE Act. The information and argument set forth in the response to the Notice of Intent to Deny clearly rebutted the initial findings of ineligibility by the reviewing Officer. Given that \_\_\_\_\_ was not fully afforded a complete response, the decision of the Service should be reversed and these proceedings remanded.

Thus, on appeal, the applicant did not allege any valid, specific legal or factual error in the director's decision and he did not submit additional evidence. As of the date of this decision, no additional evidence has been submitted. The AAO will consider the record complete.

Any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv). A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence and has not addressed the basis for denial. The appeal must therefore be summarily dismissed.

The AAO also notes the following. When establishing continuous residence in the United States from a date prior to January 1, 1982 through May 4, 1988, the regulation at 8 C.F.R. § 245a.15(c) indicates that the LIFE legalization applicant must show that he or she was not outside the United States for more than 45 consecutive days during the relevant period, unless the applicant is able to show that due to emergent reasons he was not able to return within 45

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<sup>1</sup> The 1981 Form 1040A, U.S. Individual Tax Return, in the record is not signed by the applicant and the date which the tax preparer signed the document is not legible.

days. On the Form I-687, Application for Status as a Temporary Resident, which the applicant signed under penalty of perjury on July 12, 1990, at item 36, the applicant stated that he exited the United States on September 10, 1987 in order to stay in Mexico and that he did not return until January 5, 1988. On the Form for Determination of Class Membership in *CSS v. Meese* which the applicant signed on July 13, 1990, the applicant stated that he departed the United States on September 10, 1987 in order to visit Mexico and did not return until January 5, 1988.

In addition, this office notes that a preponderance of the evidence in the record indicates that the applicant has in the past and may currently be engaged in the unauthorized practice of dentistry. In the record is the affidavit of [REDACTED] dated July 17, 1990 on which the affiant attested that she resides in Rosemead, California and that the applicant was her family dentist from October 1980 through the date that she signed that form. Also, in the record are over 30 receipts with dates from 1980 through 1990. The receipts appear to be receipts for payments for dental work and they each list the following heading in Spanish: [REDACTED], your Hispanic dentist in the home," followed by a Los Angeles area telephone number. These documents support the finding that the applicant held himself out as [REDACTED] and engaged in the practice of dentistry in Southern California from 1980 through 1990. Yet, on the Form I-485, Application to Register Permanent Residence, which the applicant signed under penalty of perjury on May 13, 2003, he stated at item 3, part A that his occupation is that of dental technician. On the Form I-687 at item 36, he listed himself as self-employed and listed his occupation as "dental." Thus, the record taken as a whole indicates that the applicant is not properly licensed to practice dentistry in the United States.

Finally, on March 13, 2005, the South Gate, California Police Department arrested the applicant and charged him with driving under the influence of drugs/alcohol and with driving under the influence of a blood/alcohol content of 0.08 percent or higher by weight. On May 20, 2005, the applicant pled no contest to and was convicted of the misdemeanor: driving a vehicle with a blood/alcohol content of 0.08 percent or higher by weight under California Vehicle Code § 23152(B). The judge, Superior Court, County of Los Angeles, sentenced the applicant: to 36 months probation; to pay several fines and fees; to enroll in a first-offender alcohol and drug education and counseling program; to restrict his driving for 90 days; and to obey all laws and orders of the court. In this case, with court docket number: [REDACTED] the applicant was arrested and convicted under the name: [REDACTED]. The AAO finds that this one misdemeanor conviction is not a conviction for a crime involving moral turpitude, and it does not impact the applicant's eligibility for the benefit sought in this matter.

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

Enc. NWIRP Class Member Notice