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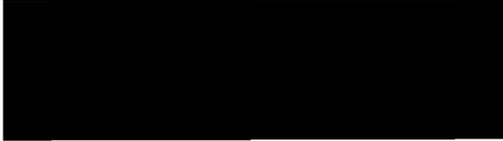
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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RE: [REDACTED]
MSC 03 030 60573

Office: BALTIMORE, MD

Date: **MAR 01 2010**

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:

SELF-REPRESENTED

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On August 19, 2005, the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The director denied the application because he found that the applicant had not shown that his immigration status in the United States was unlawful from a date prior to January 1, 1982 and through May 4, 1988.

On appeal, the applicant asserted that he had established continuous, unlawful residence throughout the statutory period and that he is otherwise eligible to adjust to permanent resident status under the LIFE Act.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO’s *de novo* review authority. *See*, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.²

As a preliminary matter, the AAO notes that the director found the applicant eligible for class membership under the LIFE Act. Also, on September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al. vs. USCIS, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

¹ All legalization and LIFE legalization cases filed with the U.S. Citizenship and Immigration Services (USCIS) which turn on the question of whether an applicant’s unlawful status was known to the government throughout the requisite period and related issues were held for an extended period until the final terms of various legalization class-action lawsuits which relate to these issues were handed down, the final such class-action lawsuit being: *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). It is the facts of this case that forced USCIS to place it and others like it on hold, rather than some request on the applicant’s part that his case be held pending the outcome of these class-action lawsuits/settlement agreements. The terms of the NWIRP Settlement Agreement were handed down during September 2008. After that, this office began adjudicating these appeals in the order received. As a consequence, this appeal was not completed within the processing time that LIFE legalization appeals are normally completed.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 –

(A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an Immigration and Naturalization Service (INS) officer or agent acting on behalf of the INS, including a Qualified Designated Agency (QDE), and whose applications were rejected for filing (hereinafter referred to as ‘Subclass A members’); or

(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); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

- i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as ‘Sub-class C.i. members’),
- ii. was denied or whose temporary resident status was terminated, where the INS or USCIS action or inaction was because INS or USCIS believed the applicant had failed to meet the ‘known to the government’ requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as ‘Sub-class C.ii 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.
- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the

- alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
- (3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of
- a. reinstatement to nonimmigrant status;
 - b. change of nonimmigrant status pursuant to INA § 248;
 - c. adjustment of status pursuant to INA § 245; or
 - d. grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

NWIRP provides that LIFE legalization applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, he violated the terms of his nonimmigrant status 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. It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of a school or employer report in government records is not sufficient on its own to rebut this presumption. Once the applicant makes a *prima facie* showing of having violated nonimmigrant status in a manner known to the government, USCIS then must rebut the evidence that the applicant violated his status. If USCIS fails to rebut the evidence, 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. Where an individual claims to have obtained his or her nonimmigrant status by fraud or mistake, the applicant bears the burden of establishing this.

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 at 8 C.F.R. § 245a.18(d)[the regulation relating to whether an applicant is at risk of becoming a public charge as analyzed under the Legal Immigration Family Equity (LIFE) Act of 2000] or at 8 C.F.R. § 245a.2(k)(4)[the regulation relating to whether an applicant is at risk of becoming a public charge as analyzed under the Immigration Reform and Control Act (IRCA) of 1986], whichever is more favorable to the applicant.

On November 9, 2009, the AAO issued the applicant a notice of intent to dismiss in this case which stated that the record is not clear regarding whether he is an NWIRP class member as enumerated above. That is, the applicant has stated throughout these proceedings that he entered the United States as a nonimmigrant F-1 student on August 15, 1981. The copy of the Lincoln University Student Ledger for him in the record establishes that: on October 30, 1981 he made a \$75.00 registration deposit; and on October 30, 1981, the university issued him a cash receipt for a payment of \$4,125.00. The applicant also submitted a copy of an envelope addressed to him at his address in Brooklyn, New York and postmarked on December 17, 1981. However, the record does not include

a copy of a Form I-94, Arrival-Departure Record, which displays an August 15, 1981 entry stamp or the copy of a passport page which displays an August 15, 1981 entry stamp into the United States.³

It was explained to the applicant in the notice of intent to dismiss that if he has no documentation of his stated August 15, 1981 nonimmigrant entry, the following applies: Where an applicant is claiming that he made a pre-1982 nonimmigrant entry and that his period of authorized stay expired prior to January 1, 1982 or that he violated his status in a manner known to the government prior to January 1, 1982, and the applicant has no documentary evidence of these claims, the AAO shall use as guidance instructions set forth in the NWIRP settlement. In the attachment to this settlement titled: Exhibit 2 Instructions and Class Member Worksheet at page 5, the NWIRP class member without documentary evidence of his nonimmigrant entry or credible declarations regarding this entry is instructed that he may submit a sworn statement. See copy of Exhibit 2 attached. The AAO afforded the applicant an opportunity to submit a similar sworn statement in response to the notice of intent to dismiss in order to support his claims that he entered the United States on a nonimmigrant visa for which the period of authorized stay expired prior to January 1, 1982 or whose terms he violated in a manner that was known to the government prior to January 1, 1982. The sworn statement was to specify: the U.S. Consulate where the applicant applied for the pre-1982 visa; the date that he received the nonimmigrant visa; the date that he used the visa to enter the United States; the location where he entered the United States using the nonimmigrant visa; the date on which his period of authorized stay expired, if known; and a brief description of any activities that he engaged in consistent with the terms of the visa immediately after entering the United States.

The notice stated that if the applicant did present such statement and did establish that he entered as a nonimmigrant, and if this statement indicates that his period of authorized stay continued beyond January 1, 1982, the AAO would consider, for example, if he was required to file a quarterly address report with the Immigration and Naturalization Service, (INS, now USCIS), prior to January 1, 1982.⁴ There are no address reports in the record. Thus, if he was required to file such report, then the AAO would find that he violated his nonimmigrant status in a manner that was known to the government prior to January 1, 1982, in keeping with the NWIRP settlement.

The applicant did submit a sworn statement which establishes that he entered as a nonimmigrant on August 15, 1981. The record indicates that the applicant did not file the required address report by November 15, 1981. Thus, the AAO finds that the applicant is an NWIRP class member and that he violated his nonimmigrant status when he failed to submit an address report by November 15, 1981 and that his unlawful status was known to the government as of January 1, 1982.

The AAO also finds, in keeping with the NWIRP settlement agreement, that the applicant's nonimmigrant entries made after January 1, 1982, such as his January 14, 1984 and January 15, 1985

³ The applicant has indicated in these proceedings that his passport from the relevant period was lost during 1988.

⁴ If the applicant entered as a nonimmigrant F-1 student or B-2 visitor on August 15, 1981 he would have been required to file a quarterly address report by November 15, 1981.

nonimmigrant F-1 student entries, were procured through fraud or mistake. That is, there is no indication in the record that the applicant ever acknowledged to U.S. officials that he had committed any immigration violations and asked to have his lawful status properly reinstated prior to making these entries. Also, according to statements he made in this proceeding, the applicant's nonimmigrant entries made subsequent to January 1, 1982 were made with the intent to reside indefinitely in the United States and to continue working without authorization.

Thus, the applicant has established that his presence in the United States during the requisite period was not lawful.

On appeal, the applicant indicated through counsel that the record establishes that he is otherwise eligible to adjust under the LIFE Act.

To be eligible for adjustment to permanent resident status under the LIFE Act, the applicant must establish his or her 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 in relevant part:

(i) In General – The alien must establish that he or she entered the United States before January 1, 1982, and 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.

See also 8 C.F.R. § 245a.11(b).

The regulation at 8 C.F.R. § 245a.15(c) provides, in relevant part, that an alien shall be regarded as having resided continuously in the United States if:

(1) 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.

An applicant for permanent resident status under the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in any of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(CSS), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993)(LULAC), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993)(Zambrano). *See* 8 C.F.R. § 245a.10.

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 regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

. . .

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Section 212(a)(6)(C) of the Act provides in pertinent part:

Misrepresentation. – (i) 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See id.*

Documentary evidence may be in the format prescribed by USCIS regulations. *See id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with the regulatory requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states 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 petitioner or 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, 431 (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, to deny the application or petition.

On or near October 23, 1991, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On October 30, 2002, he filed Form I-485, Application to Register Permanent Resident or Adjust Status, under section 1104 of the LIFE Act.

The director issued a notice of decision in which he denied the application because he found that the applicant failed to show that he had become unlawful in a manner that was known to the government prior to 1982 and he found that the applicant was in lawful status for at least part of the relevant period.

As previously stated, the AAO finds that the applicant has established that his unlawful status was known to the government as of January 1, 1982 and that his presence in the United States during the requisite period was unlawful.

The remaining issues in this proceeding are whether the applicant is able to establish: that he resided continuously in the United States from some date prior to January 1, 1982 through May 4, 1988; that he is admissible to the United States; and that he is otherwise eligible to adjust under the LIFE Act.

The notice of intent to dismiss stated that record includes the following inconsistent or incomplete evidence regarding the applicant's claim that he resided continuously in the United States throughout the statutory period:

1. The Form I-687 which the applicant signed under penalty of perjury on October 23, 1991 on which he stated that his only absence from the United States since entering in 1981 occurred between September 4, 1987 and September 30, 1987.⁵
2. The Form I-20A-B stamped to show that the applicant entered the United States as a nonimmigrant F-1 student at New York City on January 14, 1984 and the Form I-20 A-B stamped to show that he entered the United States as an F-1 student at New York City on January 15, 1985. A copy of two Forms I-94, Arrival Departure Record, stamped to show that the applicant entered the United States at New York City on January 14, 1984 and January 15, 1985.

The record includes inconsistent information regarding whether the applicant was absent from the United States during 1984 and 1985. The record also does not include any statement from the applicant regarding how long he was absent prior to his January 14, 1984 and January 15, 1985 re-entries.

In reply to the notice of intent to dismiss, the applicant indicated that prior to his January 1984 and January 1985 re-entries, he was absent from the United States for no more than 25 to 30 days on a holiday visit to Nigeria, and that his studies would not allow him to be absent more than that. Sections of the Howard University, Washington, D.C., Office of the Registrar statement in the record establish that the applicant attended Howard University from: August 15, 1983 through December 16, 1983 and from August 13, 1984 through December 14, 1984. Thus, the preponderance of the evidence establishes that the applicant was absent less than 45 days during December 1983/January

⁵ In reply to the notice of intent to dismiss, the applicant indicated that he cannot recall being absent from the United States during 1987. This office notes that whether or not he was absent during September 1987, as stated on the Form I-687, does not impact his eligibility in this matter. Thus, the AAO finds that any discrepancy between the applicant's statements regarding this absence made in reply to the notice of intent to dismiss and his statements regarding this September 1987 absence made earlier in this proceeding are not material.

1984 and December 1984/January 1985, and that these absences did not break his continuous residence in the United States.

The record includes independent, objective evidence of the applicant's continuous residence in the United States during the statutory period such as: a letter from Lincoln University, Lincoln University, Pennsylvania which establishes that the applicant was enrolled full-time at this university from January 1982 through April 1982. A copy of the Lincoln University student ledger which establishes, for example, that the applicant received a receipt for cash payment from that university during October 1981. In addition, the applicant's 2002 Social Security Administration statement in the record establishes that he paid into Social Security each year from 1982 through 2001. The Howard University, Washington, D.C., Office of the Registrar statement in the record, in its entirety, establishes that the applicant attended Howard University from: August 16, 1982-December 17, 1982; January 4, 1983-May 13, 1983; August 15, 1983-December 16, 1983; August 13, 1984-December 14, 1984; January 4, 1985-May 10, 1985; May 20, 1985-July 27, 1985; and August 15, 1985-December 20, 1985. The Courier America employment letter in the record establishes that the applicant worked at Courier America from June 1986 through June 1988. The applicant also submitted copies of his Forms W-2, Wage and Tax Statement, for 1982 and 1985. He submitted pay stubs from 1985 and 1986. He submitted original, official statements to be submitted with tax forms which document his interest income in 1986 and 1987. He submitted documentation from the Internal Revenue Service (IRS) dated September 30, 1991 which establishes that the applicant filed taxes for 1986, 1987, 1988, 1989 and 1990.⁶

Based on this evidence in addition to other evidence of continuous residence in the A-file, the AAO finds that the applicant has established continuous residence in an unlawful status in the United States from a date prior to January 1, 1982 through May 4, 1988.

The notice of intent to dismiss also stated that evidence in the record establishes that the applicant represented himself as a lawful nonimmigrant upon admission to the United States on January 14, 1984 and January 15, 1985.⁷ The regulations state that those legalization applicants, who are

⁶ The IRS summary in the record indicates that the applicant filed as head of household during 1986-1990. The notice of intent to dismiss inquired into whether, for example, he was listed as head of household on these forms because he had additional children whom he had not listed in these proceedings, and if so, the AAO requested that he provide the place and date of birth of such children. In reply to the notice of intent to dismiss, the applicant explained that he was listed as head of household on his tax forms, not because he had other children who were not listed in these proceedings, but because he had a relative living with him during 1986-1990. He indicated that after receiving the notice of intent to dismiss, he investigated the head of household classification and found that it was an error on his part to file as head of household based on this relative. The AAO finds such error is not material to the applicant's eligibility in these proceedings.

⁷ In the notice of intent to dismiss, the AAO stated in error that the record indicates that the applicant also entered as an F-1 nonimmigrant in September 1987. This point in the notice of intent to dismiss is withdrawn. The applicant's Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC) in the record, which was apparently submitted in

otherwise eligible for legalization, who were present in unlawful status prior to January 1982 and who re-entered as nonimmigrants during the requisite period in order to continue residing in the United States in unlawful status are found to have entered by fraud and must file a request for a waiver of this ground of excludability/inadmissibility. *See* 8 C.F.R. §§ 245a.2(b)(9) and (b)(10) and 8 C.F.R. § 245a.18(c).⁸

The notice of intent to dismiss stated that the applicant has not yet submitted to the director the Form I-690, Application for Waiver of Grounds of Inadmissibility, which is the form he must file to request a waiver of this ground of inadmissibility. The notice stated that on this form, he must list any ground of inadmissibility to which he is subject and state reasons why his request for a waiver should be granted based on family unity considerations or humanitarian or public interest considerations. The AAO provided the applicant an opportunity to file the Form I-690 with the director and requested that he provide, in response to the notice of intent to dismiss, proof of that filing and a complete copy of the form as filed, including copies of any documentation which he submits to the director to support that request.

In response to the notice of intent to dismiss, the applicant did not file the Form I-690 with the director. Instead, the applicant indicated that, at most, his nonimmigrant entries in 1984 and 1985 were procured by mistake, not by fraud, in that he believed that he was entitled to re-enter as an F-1 student, even though he had been working without authorization, because he was at that time enrolled as a student at Howard University in Washington, D.C. As such, the applicant believes that he is not required to file the Form I-690.

The applicant is incorrect. This issue is governed by the specific language of the regulations themselves. The regulations at 8 C.F.R. §§ 245a.2(b)(9) and (b)(10) state that a legalization applicant who is otherwise eligible for legalization and who entered as a nonimmigrant during the requisite period in order to return to his unrelinquished, unlawful residence, [as is the case here, as the applicant acknowledged that he had fallen out of lawful status by working without authorization and was residing in the United States unlawfully prior to his brief December 1983/January 1984 and December 1984/January 1985 absences followed by his nonimmigrant entries in 1984 and 1985], “must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.” The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended. An applicant might only overcome this particular ground of inadmissibility if he applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c).

1991, indicates that the applicant entered without inspection at the time of his stated re-entry on September 30, 1987.

⁸ As alluded to earlier, the legal requirements of legalization as in place at the time of the enactment of LIFE legalization provisions apply to LIFE legalization cases except where specifically superseded by a LIFE provision such as the provision that the requisite period end on May 4, 1988, rather than at the time of filing for legalization.

The applicant has not established that he is admissible to the United States or that he has submitted to the director a properly completed request for a waiver of the grounds of inadmissibility to which he is subject. Thus, the applicant is not eligible to adjust to permanent resident status under section 1104 of the LIFE Act, and this appeal must be dismissed.⁹

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

⁹ If the applicant provides proof that he has filed a properly completed Form I-690 and submits a request that this office re-open this matter on its own motion, the AAO might, in its discretion, consider that request.