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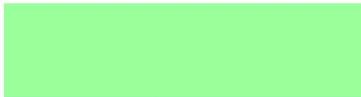


U.S. Citizenship
and Immigration
Services



DATE: SEP 06 2013 OFFICE: NEBRASKA SERVICE CENTER

IN RE:

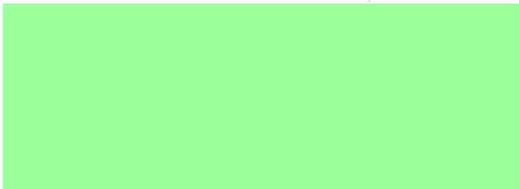


APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

FILE:



ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a light blue rectangular background.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director (director) denied the Application for Waiver of Grounds of Inadmissibility (Form I-690). In a separate action, the director certified its decision to the Administrative Appeals Office (AAO) for review. The director's decision to deny the Form I-690 application will be withdrawn. The waiver application will be approved.

On August 30, 2004, the applicant filed a motion to reopen the denial of his Application for Status as a Temporary Resident (Form I-687) pursuant to *Proyecto San Pablo v. INS*, No. 89-00456-WBD (D. Ariz). The motion to reopen was approved. On April 28, 2005, the applicant filed a Form I-690, Application for Waiver of Grounds of Inadmissibility, pursuant to section 245A of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225a. The director denied the application and certified its decision to the AAO.

In a decision dated April 3, 2013, the director denied the Form I-690 waiver application, finding that the applicant's August 22, 1984 deportation and subsequent entry without inspection renders him ineligible for a waiver, as there is no authority to "waive the statutory requirement of continuous residence in the United States." The director therefore concluded that no purpose would be served in granting the application for waiver of grounds of inadmissibility.

On certification, counsel asserts that the waiver application should be granted based on family unity, humanitarian and public interest grounds. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on this matter.

An applicant for temporary resident status under section 245A of the Act has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 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.2(d)(5).

In *Proyecto San Pablo v. INS*, No. CIV 89-456-TUC-WDB (D. Ariz. Feb. 2, 2001), the U.S. District Court for the District of Arizona held that the legacy Immigration and Nationalization Service (legacy INS) violated the due process rights of a class of applicants for legalization under the Immigration Reform and Control Act of 1986 (IRCA) when it denied those applicants access to their complete deportation or exclusion files and prevented them from seeking waivers to "cure" prior deportations or exclusions. On March 27, 2001, the court ordered the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) to reopen legalization applications filed by class members and (1) accept waiver applications submitted by class members and adjudicate them in the same manner as waiver applications filed by other legalization applicants were adjudicated; and (2) prior to making a decision on a reopened legalization application, provide the applicant with complete copies of prior deportation files, including copies of tapes and/or transcripts of the hearings before the immigration court, to enable the applicant to bring a collateral challenge to the deportation order, if appropriate. Subsequently, in *Proyecto San Pablo v. Dept of Homeland Security*, No. CV 89-456-TUC-RCC (D. Ariz. June 4, 2007), the court reiterated its March 27, 2001 holding and ruled that:

Any class member who files for an application for waiver (Form I-690) is entitled to adjudication on the merits in the same manner that waiver applications filed by other legalization applicants are adjudicated. CIS does not comply with this order by denying the waiver application on the grounds such as, e.g., “no purpose would be served” by approving the waiver. In adjudicating the waiver application filed by class members, CIS must take into account humanitarian purposes, assuring family unity, and the public interest, as required by statute. INA §245a(d)(2)(B)(i), 8 U.S.C. §1255a(d)(2)(B)(i).

Pursuant to the terms of the 2007 amended *Proyecto* order, the AAO reviews this matter on certification for purposes of adjudicating on the merits the previously filed Form I-690 waiver application. The record shows that the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), which relates to aliens who were deported and reentered the United States without inspection. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(9)(A)(ii)(II) of the Act, “in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” 8 C.F.R. § 245a.2(k)(2).

The regulation defines the term “family unity” as “maintaining the family group without deviation or change.” 8 C.F.R. § 245a.1(m). The same regulation provides that the phrase “family group” includes the spouse and unmarried minor children under 18 years of age who are not members of another household. *Id.* In *Matter of P-*, the Commissioner defined the term “in the public interest” to mean “something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.” 19 I&N Dec. 823, 828 (Comm. 1988). Moreover, the Commissioner noted that “Congress contemplated that waivers under section 245A of the Act be granted liberally.” *Id.*; see also *Matter of N-*, 19 I&N Dec. 760, 760 (Comm. 1988) (noting that Congress intended the legalization program to be administered in a liberal and generous fashion). “In most cases, denials of legalization on the basis of the waivable exclusions should only occur when the applicant also falls within one of the specific non-waivable grounds of exclusion.” H.R.Rep. No. 98-115, 98th Cong, 1st Sess. 69-70.

The AAO notes that although there is a liberal standard for waiver applications under section 245A of the Act, such waivers are not automatically granted to all legalization applicants. The applicant must show that the waiver should be granted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i).

Counsel asserts that the waiver application should be granted based on humanitarian and public interest grounds.

The evidence submitted by the applicant in support of his waiver application establishes he is married and is the father of two United States citizen children, one of whom is under 18 years of age, has been working as a groundskeeper for the [REDACTED] in Colorado for the past

10 years, has been employed continuously in the United States since August 1980, and the record does not reflect any arrests or criminal convictions since his July 13, 1984 arrest for "driving while ability impaired" by officers of the [REDACTED]

Counsel contends that the applicant is eligible for a waiver based on family unity and humanitarian grounds. Counsel recites the facts listed above regarding the applicant's close family ties in the United States. Counsel asserts that the applicant's wife and U.S. citizen children depend upon him for financial and emotional support. He indicates that the applicant is a loving husband and father to his children.

In a declaration submitted in support of his waiver application dated April 29, 2013, the applicant states that he works hard to support his wife and two U.S. citizen children. Although the record evidence indicates that the applicant's oldest child is now an adult, the applicant's wife and youngest child still qualify for the "family group" definition as set forth in 8 C.F.R. § 245a.1(m). Accordingly, the applicant has shown that a Form I-690 waiver would assure "family unity."

The applicant states that for the past 10 years he has worked for the [REDACTED] and that he has an excellent work record there. His assertions are corroborated by [REDACTED] the [REDACTED]. In a declaration dated April 24, 2013, [REDACTED] states that the applicant has a great work ethic and is an asset to their operations. He further states that the applicant "is a pleasure to work with and his contributions to [the] District are valuable."

The record also includes a letter of reference dated April 27, 2013 by [REDACTED]. [REDACTED] states that the applicant has been a member in good standing of the [REDACTED] for more than 20 years. [REDACTED] asserts that the applicant displays a mild and humble attitude and that he is willing to help the congregation with "whatever needs done." [REDACTED] also states that the applicant has spent many years helping as a volunteer in their bible education work and has a high regard for bible principles. The applicant has therefore developed ties to the United States. He is an active member of his community and church. The applicant has established that he is eligible for a waiver based on humanitarian grounds and that the grant of a waiver would serve the public interest in that he would continue to serve the community as a volunteer.

It is noted that the immigration violations committed by the applicant are serious in nature and cannot be condoned. However, upon thorough review of all positive and negative factors presented in the waiver application, the AAO is persuaded that the applicant is eligible for the waiver of the section 212(a)(9) inadmissibility on humanitarian grounds, to assure family unity and in the public interest.

ORDER: The director's decision denying the applicant's Form I-690 application is withdrawn. The waiver application is approved.