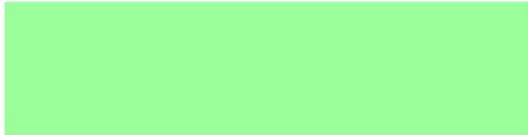




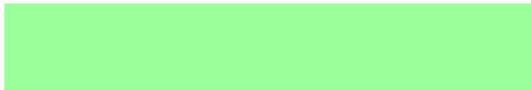
U.S. Citizenship
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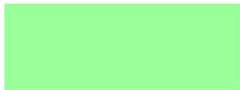
DATE: SEP 16 2013 OFFICE: NEBRASKA SERVICE CENTER

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".

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) and certified the decision to the Administrative Appeals Office (AAO) for review. The director's decision to deny the Form I-690 application and will be withdrawn and the waiver application will be approved.

On February 29, 2008, 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), and 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 motion to reopen was approved.

In a decision dated March 29, 2013, the director denied the Form I-690 waiver application, finding that it was not in the public interest to grant a waiver of inadmissibility to the applicant. The director cited as grounds for the denial the applicant's March 19, 1984 conviction for illegal entry into the United States and his January 11, 2002 expedited removal for presenting a false permanent resident card to an immigration inspector in an attempt to procure admission.

Counsel asserts that the waiver application should be granted based on family unity and humanitarian 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.

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, and section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), which relates to a willful misrepresentation of a material fact. 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 sections 212(a)(6)(C)(i) and 212(a)(9)(A)(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 specified nonwaiverable 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).

The evidence submitted by the applicant in support of his waiver application establishes he has been married to a United States citizen for 22 years, is the father of four United States citizen children, two of whom are under 18 years of age, has been employed continuously in the United States since his entry without inspection in 1979, and has not been convicted of a crime since his 1984 misdemeanor conviction for illegal entry into the United States.

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 further states, and documentary evidence in the record indicates, that the applicant has numerous family members who reside in the United States. Specifically, the applicant's parents are lawful permanent residents of the United States and so are his wife's parents. The applicant also has two United States citizen siblings and four other siblings who are lawful permanent residents.

In a declaration submitted in support of his waiver application, the applicant states that he has made every effort to work hard and be a responsible person. He asserts that he is the sole breadwinner of the family and that his income supports his wife, his four children, and his parents-in-law. The applicant further asserts that the family relies on his financial and emotional support. Declarations by the applicant's wife and oldest daughter indicate that their family depends upon the applicant for medical and economic assistance. The documentary evidence submitted in support of the waiver application reflects that the applicant has resided in the United States for the past 33 years with no felony criminal record, has paid income taxes, attends church services with his family regularly, and has contributed to his family and community.

The applicant's wife asserts that she has lived in the United States for over 20 years. She indicates that she only works a few hours per week and that the applicant is the main financial provider for their family. The applicant's wife further asserts that their lives depend on the applicant and his income. She also states that the applicant takes care of her parents, who reside with them for most of the year. The applicant's wife indicates that he is responsible for taking her parents to doctor's appointments and that he cares for and treats her parents as his own. She further indicates that her family has medical insurance through the applicant's employment and that they would lose the insurance if the applicant is unable to remain in the United States in a lawful status. The applicant's wife points to poor country conditions in the area where they would reside in Mexico as additional grounds upon which to grant the waiver application. She indicates that their children have spent their formative years in the United States, that they are not accustomed to life in

Mexico, and that their return to that country would result in decreased educational and professional opportunities.

The record includes declarations by the applicant's oldest daughter, his parents, his pastor, family friends, and his current and previous employers, all of whom attest to the applicant's good moral character and his value to his family, place of employment, and community. Although the record evidence indicates that the applicant's two oldest children are now adults, the applicant's wife and two youngest children 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."

It is noted that the criminal conviction and 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 sections 212(a)(6)(C) and 212(a)(9) inadmissibility on humanitarian grounds and to assure family unity.

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