U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 19 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,

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. In a decision dated June 16, 2005, the AAO affirmed the director's denial. The AAO now reopens the matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(i) for purposes of entering a new decision. The director's decision to deny the Form I-690 application and the AAO's prior decision dismissing the appeal will be withdrawn and the waiver application will be approved.

On March 9, 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. Also on March 9, 2004, 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.

In a decision dated March 28, 2005, the director denied the Form I-690 waiver application, finding the applicant's November 16, 1985 departure pursuant to a deportation order meant he failed to maintain the required continuous residence. *See* Section 245A(g)(2)(b)(i) of the Act, 8 U.S.C. § 1255a(g)(2)(b)(i).[1] On June 16, 2005, the AAO affirmed the director's decision noting that no purpose would be served in granting the waiver as the applicant was otherwise ineligible for legalization due to his November 16, 1985 deportation.

Pursuant to the terms of the 2007 amended *Proyecto* order, the AAO reopens this matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(i) 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. He is also inadmissible under section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to acquire an immigration benefit by willful misrepresentation of a material fact. The record reflects that on his Form I-687 legalization application filed on April 25, 1988, he stated that he had no prior record with the Immigration and Naturalization Service, and that he had not been deported or even absent from the United States since 1982. Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. §1255a(d)(2)(B)(i), such inadmissibility may be waived "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"

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[1] The section provides that "an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation."

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).

The evidence submitted by the applicant in support of his waiver application establishes he is married with five children, has been employed continuously in the United States since his entry without inspection in December 1981, and has no misdemeanor or felony criminal convictions.

In a declaration submitted in support of his waiver application dated February 26, 2004, the applicant states that he has lived a law-abiding life in the United States in order to work hard and support his wife and five daughters, all of whom live in Mexico. The applicant states that his entire family depends upon his financial support to survive in the town of [redacted] Mexico. He states that he has endured the class action litigation process in an effort to obtain legal status and no longer fear removal.

The applicant states that he has a consistent work record in the United States. The record reflects that he has worked as a janitor at [redacted] Illinois for the past 14 years. The applicant indicates that he has never used aliases to work and that he attends mass regularly. His assertions regarding church attendance are corroborated by Reverend [redacted] Pastor of the '[redacted]" In a declaration dated April 13, 2009, Rev. [redacted] states that the applicant has been a registered member of the parish since 1995 and that he attends church services regularly. The applicant also submitted a letter dated July 2, 2009 by [redacted] Assistant Principal at [redacted] In her letter, Ms. [redacted] states that the applicant has worked at [redacted] since February 10, 1999.

The record also includes a letter of reference dated July 8, 2009 by [redacted] the applicant's landlord. Mr. [redacted] states that the applicant has been his tenant since August 2003. Mr. [redacted] asserts that the applicant has shown great responsibility and has always been courteous and considerate.

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)(9) and 212(a)(6) inadmissibility on humanitarian grounds.

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