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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 2 3 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. The director's decision to deny the Form I-690 application will be withdrawn and the waiver application will be approved.

On May 21, 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). On September 5, 2007, 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 motion to reopen was approved.

In a decision dated April 19, 2013, the director denied the Form I-690 waiver application, finding that the applicant was not eligible for a waiver of inadmissibility. As grounds for the decision, the director cited the applicant's November 3, 1984 willful misrepresentation to immigration officers upon apprehension and the applicant's October 25, 2009 arrest for inflicting corporal injury upon a spouse.

Counsel asserts in a legal brief dated September 11, 2013 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.

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 since 1987, is the father of three United States citizen children, one of whom is under 18 years of age, has been employed continuously in the United States since September 1980, and was convicted on April 7, 2010 of a misdemeanor offense in California.

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's U.S. citizen children depend upon the applicant's financial and emotional support.

In a declaration submitted in support of his father's waiver application, states that his life would be significantly disturbed if his father is deported to Mexico. The applicant's oldest son indicates that the applicant provides him financial support and a place to live. He states that as a full-time student, he needs his father now more than ever. The applicant's son asserts that he will be fully dependent upon his father until he completes his academic career. further indicates that he would be unable to support himself should the applicant be deported and that he would be unable to return to Mexico with his father.

The applicant's son, asserts in his letter of support that the applicant has been a positive influence in his life and that he is very grateful for the support he receives from his father. asserts that his father understands every aspect of his life and has always been there for him. further asserts that his father deserves every opportunity to remain in the United States as he is always ready to "give 100%" and is committed to becoming a good citizen. The applicant's son states that his father is an honest, hard-working man who is always teaching his family to live in discipline and order.

The applicant's youngest son, , states in his support letter that his father gives him advice on how to be a good person and that his father is showing him "the way in life." asserts that he enjoys the positive conversations and good times he spends with his father, and that he wants his father to remain in the United States to watch him grow and start a family of his own.

The record includes declarations by the applicant's acquaintances 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 youngest son 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."

With regards to humanitarian and public interest grounds, the record includes a letter by owner of in San Clemente, California. indicates that the applicant has been his employee for 16 years and currently holds the position of manager. asserts that the applicant is an honest, trustworthy, and skilled manager. He further asserts that the applicant is compassionate, reliable, friendly, and that his children reflect a solid upbringing. Additional reference letters submitted by former employers describe the applicant as punctual, dependable, willing to learn and improve his skills, and exemplary.

The record also includes a letter of reference by Senior Pastor of the located in San Juan Capistrano, California. states that the applicant has been a member of the church since 1996, and is a serious and hard-working person. also states that the applicant has participated in various church activities and is always willing to assist in any way possible. The record therefore reflects that the applicant has 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 raise and support his children, serve his church, and continue his employment as a manager at

It is noted that the applicant's domestic violence charge is 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 to assure family unity and on humanitarian and public interest grounds.

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