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FILE:



Office: NEW YORK

Date:

DEC 19 2007

MSC-06-101-23274

IN RE:

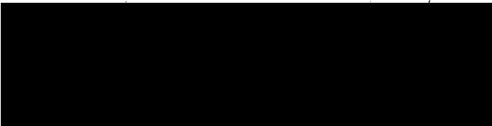
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the New York office that originally decided your case legalization application.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Application for Waiver of Inadmissibility was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. In addition, it is noted that the applicant's Form I-687 is being denied this date also, but in a separate decision.

The director denied the waiver application on August 27, 2007, because the applicant was otherwise ineligible for temporary residence in the legalization program. The director determined that the applicant had failed to indicate how he qualified for a waiver or failed to provide supporting evidence of the same. The director further determined that the applicant's Form I-687 application was being denied for reasons other than admissibility issues, and therefore, rendered the outcome of the Form I-690 application moot.

On appeal, counsel states that he is appealing the director's decision because she failed to consider the evidence the applicant submitted in response to the Notice of Intent to Deny, dated March 29, 2006, in rendering her decision.

Contrary to counsel's assertions, the record of proceedings shows that the director did in fact review the evidence submitted in response to the Notice of Intent to Deny, in that she addressed the evidence contained in the record of proceedings, and directly addressed the credibility of the statements made by affiant's in attestations which were submitted by the applicant in response to the director's NOID dated March 29, 2006. Furthermore, the applicant fails to address the issues raised by the director in her decision to deny the Form I-690 application as noted above.

An applicant for temporary residence must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). 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 of the United States, and that absence was not due merely to a brief and casual trips abroad. Section 245A(g)(2)(A) of the Act, 8 U.S.C. § 1255a(g)(2)(A).

The general grounds of inadmissibility are set forth in section 212(a) of the Act, and relate to any alien seeking a visa or admission into the United States, or adjustment of status. An applicant's inadmissibility under section 212(a)(9)(C)(i)(I) or (i)(II) for having been unlawfully present in the United States for an aggregate period of more than 1 year after the previous immigration violation may be waived. However, an alien's inadmissibility under section 212(a) of the Act is an entirely separate issue from the continuous residence and continuous physical presence issues noted above.

The appeal of the director's denial with respect to the applicant's Form I-687 application has been dismissed in another decision, where the AAO determined that the applicant had failed to establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. §

1255a(a)(2). Here, the applicant's Form I-687 application was denied for reasons other than admissibility issues, and therefore, renders the outcome of the Form I-690 application moot. It is concluded that the director's decision to deny the waiver application because the outcome of the Form I-690 application was moot was proper, logical and legally sound.

**ORDER:** The director's decision dated August 27, 2007 is affirmed, and the appeal is dismissed.