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LI



FILE: [REDACTED]
XPW 90 145 1312

Office: LOS ANGELES

Date: JUL 25 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment of status from temporary to permanent resident was denied, reopened, and denied again by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The district director denied the application on March 13, 2007, because the applicant failed to provide proof of financial responsibility.

An alien applying for adjustment of status from temporary to permanent resident must establish that he or she has continuously resided in the United States since the date the alien was granted temporary resident status; that he or she is admissible to the United States as an immigrant; and that he or she meets the requirements of section 312 of the Act, as amended, relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States or that he or she is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding. 8 C.F.R. § 245a.3(b).

An alien who is likely at any time to become a public charge is inadmissible to the United States. Section 212(a)(4)(A) of the Act, 8 U.S.C. § 1182(a)(4)(A). This ground of inadmissibility may not be waived unless the alien is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act. 8 C.F.R. § 245a.3(g)(3)(ii)

Prior to use of the special rule for determination of public charge, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be likely to become a public charge, he or she may still be admissible under the terms of the Special Rule. In determining whether an alien is likely to become a public charge, financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The determination of financial responsibility should be a prospective evaluation based on the alien's age, income, and vocation. 8 C.F.R. § 245a.3(g)(4).

The following may be submitted to establish financial responsibility: evidence of a history of employment (i.e., employment letter, W-2 Forms, income tax returns); evidence that he or she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or, Form I-134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant. 8 C.F.R. § 245a.2(d)(4).

An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not inadmissible under the provision of 8 C.F.R. § 2451.3(g)(3). The alien's employment should be continuous in the sense that the alien must be regularly attached to the work force, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. Past acceptance of public cash assistance without a history of

consistent employment will enter into this decision. The length of time an applicant has received public cash assistance will constitute a significant factor. 8 C.F.R. § 245a.3(g)(4)(iii).

The applicant appeared for her adjustment interview on August 3, 2006. At the conclusion of her adjustment interview, the applicant was issued a Form I-72 requesting that she submit evidence of financial responsibility such as federal income tax returns, Form W-2 wage and tax statements, employment letters, or a completed affidavit of support from a family member who has provided her with financial support.

The applicant, in response, provided photocopies of 2003, 2004, and 2005 federal income tax returns and W-2 wage and tax statements pertaining to [REDACTED] and [REDACTED]. The applicant did not provide an employment verification letter from her own place of employment, copies of bank statements, or copies of her own federal income tax returns or wage and tax statements as proof of financial responsibility. Nor did she provide any explanation as to her relationship with [REDACTED] or why she was submitting their financial documents as proof of her financial responsibility.

The district director determined that the applicant failed to provide proof of financial responsibility and denied the application.

On appeal, the applicant submits photocopies of 2004, 2005, and 2006 federal income tax returns and wage and tax statements from [REDACTED] along with a Form I-864, Affidavit of Support Under Section 213A of the Act, signed by [REDACTED] [REDACTED] who is a naturalized United States citizen, indicated at Part #1 of the Form I-864 affidavit that he is the applicant's only joint sponsor. He indicated at Part #6 of the Form I-864 affidavit that he is employed as a manager for [REDACTED] in Riverside, California, and that he is paid an annual salary of \$20,315.00. [REDACTED] indicated at Part 5 of the affidavit that he must support himself, a wife, and three dependent children, a total of five persons, on his annual salary of \$20,315.00. [REDACTED] federal income tax returns and wage and tax statements for the years 2003 to 2006 confirm that [REDACTED] is employed by [REDACTED] at a current annual salary of \$20,315.00.

The applicant has not submitted an employment letter, copies of federal income tax returns and/or Forms W-2, or bank statements, or any other evidence to establish her own employment history subsequent to the date she was granted temporary resident status. Indeed, she has not provided any information as to how she has supported herself in this country since she was granted temporary resident status.

In an attempt to establish financial responsibility, she has submitted an affidavit of support and financial documents from [REDACTED] an individual who is not related to her and does not appear to be under any obligation to provide her with financial support. As previously stated, [REDACTED] must support his family of five persons on an annual income of \$20,315.00. According to the 2007 United States Department of Health and Human Services poverty guidelines, a family of five persons falls below the poverty line if the total annual family income is \$30,170.00 or less.

Clearly, [REDACTED] even if he wishes to assist the applicant with financial support, cannot be expected to be the applicant's sole source of financial support.

Declarations by an applicant that he or she has not been the recipient of public cash assistance is subject to verification of facts by CIS. The applicant must agree to fully cooperate in the verification process. Failure to assist CIS in verifying information necessary for proper adjudication of the application may result in denial of the application. 8 C.F.R. § 245a.3(g)(5).

The applicant has failed, both in response to the request for additional evidence and again on appeal, to provide proof of financial responsibility. Therefore, the director's determination that the applicant has failed to establish financial responsibility will not be disturbed.

An alien applying for adjustment of status from temporary to permanent resident has the burden of proving by a preponderance of evidence that he or she has continuously resided in the United States since he or she was granted temporary resident status, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.3(b). Due to her failure to demonstrate financial responsibility, the applicant has not established that she is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.