

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY

[Redacted]

FILE: [Redacted]

Office: LINCOLN, NEBRASKA

Date: JAN 25 2008

IN RE: [Redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF APPLICANT:

[Redacted]

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. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-485, Application to Register Permanent Resident or Adjust Status, was denied by the Acting Director (“director”), Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Vietnam who filed a Form I-485 application in order to adjust his status to permanent resident pursuant to section 586 of Public Law 106-429. The director denied the application based on the fact that the applicant was not paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand, as required by section 586(b) of Public Law 106-429. *Decision of the Director*, dated December 15, 2006.

On appeal, counsel for the applicant does not contest that the applicant is not eligible to adjust his status to permanent resident pursuant to section 586 of Public Law 106-429. *Attachment to Form I-290B*, dated January 8, 2007. As an alternative, counsel requests that the applicant’s Form I-485 application be amended in order to allow him to apply to adjust his status as an individual with an approved immigrant petition giving him an immediately available immigrant visa number. *Id.* at 1.

The record contains a letter from counsel; letters from the applicant’s sister; a birth record for the applicant, and; documentation in connection with the applicant’s parole into the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 586 of Public Law 106-429 provides in pertinent part:

- (a) The status of certain aliens from Vietnam, Cambodia, and Laos described in subsection (b) of this section may be adjusted by the Attorney General, under such regulations as she may prescribe, to that of an alien lawfully admitted for permanent residence if—
 - (1) within three years after the date of promulgation by the Attorney General of regulations in connection with this title the alien makes an application for such adjustment and pays the appropriate fee;
 - (2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence except as described in subsection (c); and
 - (3) the alien had been physically present in the United States prior to October 1, 1997.
- (b) The benefits provided by subsection (a) shall apply to any alien who is a native or citizen of Vietnam, Laos, or Cambodia and who was inspected and paroled into the United States before October 1, 1997 and was physically present in the United States on October 1, 1997; and
 - (1) was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program; or

- (2) was paroled into the United States from a refugee camp in East Asia; or
- (3) was paroled into the United States from a displaced person camp administered by the United Nations High Commissioner for Refugees in Thailand.

Pub. L. No. 106-429, § 586, 114 Stat. 1900 (2000).

The implementing regulations at 8 C.F.R. § 245.21 echo the contents of section 586 of Public Law 106-429, and provide requirements for the application process as follows:

Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106-429).

(a) Eligibility. The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

- (1) Was inspected and paroled into the United States before October 1, 1997;
- (2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;
- (3) Was physically present in the United States prior to and on October 1, 1997;
- (4) Files an application for adjustment of status in accordance with paragraph (b) of this section during the 3-year application period; and
- (5) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) Applying for benefits under section 586 of Public Law 106-429—

- (1) Application period. The application period lasts from January 27, 2003 until January 25, 2006. The Service will accept applications received after the end of the application period, but only if the 5,000 limit on adjustments has not been reached prior to the end of the three-year application period, and the application bears an official postmark dated on or before the final day of the application period. Postmarks will be evaluated in the following manner:

(i) If the postmark is illegible or missing, the Service will consider the application to be timely filed if it is received on or before 3 business days after the end of the application period.

(ii) In all instances, the burden of proof is on the applicant to establish timely filing of an application.

(2) Application. An alien must be physically present in the United States to apply for adjustment of status under section 586 of Public Law 106-429. An applicant must submit Form I-485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee contained in Sec. 103.7(b)(1) of this chapter. Applicants who are 14 through 79 years of age must also submit the fingerprinting service fee provided for in Sec. 103.7(b)(1) of this chapter. Each application filed must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I-485 instructions; a completed Biographic Information Sheet (Form G-325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I-693 and vaccination supplement) specified in Sec. 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I-485, applicants must write "INDOCHINESE PAROLEE P.L. 106-429". Applications must be sent to: INS Nebraska Service Center, P.O. Box 87485, Lincoln NE 68501-7485.

* * *

(g) Evidence. Applicants must submit evidence that demonstrates they are eligible for adjustment of status under section 586 of Public Law 106-429. Such evidence shall include the following:

(1) A birth certificate or other record of birth;

(2) Documentation to establish that the applicant was physically present in the United States on October 1, 1997, under the standards set forth in Sec. 245.22 of this chapter.

(3) A copy of the applicant's Arrival-Departure Record (Form I-94) or other evidence that the alien was inspected or paroled into the United States prior to October 1, 1997, from one of the three programs listed in paragraph (a)(2) of this section. Subject to verification, documentation pertaining to paragraph (a)(2) of this section is already contained in Service files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

The record reflects that the applicant was indefinitely paroled into the United States from Germany for humanitarian reasons and family reunification, pursuant to section 212(d)(5) of the Act. *Form I-94, Departure Record*, dated June 6, 1990; *Form I-512 Authorization for Parole*, dated May 14, 1990.

Section 586(b) of Public Law 106-429 requires that the applicant be paroled into the United States as a member of one of three classes of aliens who were receiving benefits due to their status as refugees. Specifically, the applicant must have been paroled into the United States from Vietnam under the auspices of the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced person camp administered by the United Nations High Commissioner for Refugees in Thailand. Section 586(b) of Public Law 106-429. As found by the director and conceded by counsel, the applicant was not paroled into the United States as a member of one of these three classes. Thus, he is not eligible to adjust his status to permanent resident pursuant to section 586 of Public Law 106-429.

Counsel requests that the applicant's Form I-485 application be amended in order to allow the applicant to apply to adjust his status as an individual with an approved immigrant petition giving him an immediately available immigrant visa number. However, the applicant may not amend his Form I-485 application on appeal to apply under a different section of the Act.

The applicant may file a new Form I-485 application if he wishes to be considered for adjustment of status as an individual with an approved immigrant petition giving him an immediately available immigrant visa number.

In proceedings for an application to adjust status to permanent resident under section 586 of Public Law 106-429, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.