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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-05-127-11540

Office: LOS ANGELES

Date:

OCT 14 2008

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 Los Angeles 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 director of the Los Angeles office, and the decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director found the applicant ineligible for a Form I-690 Waiver of Grounds of Excludability because she determined that a waiver was not available for the grounds on which the applicant was found to be inadmissible. The applicant was found to be inadmissible under Section 212(a)(9)(A) of the Act because he was expeditiously removed from the United States and sought admission within five years of removal without first obtaining consent to reapply for admission.

On appeal, counsel for the applicant states that the applicant was not required to file a Form I-212 because Form I-690 can waive inadmissibility under Section 212(a)(9)(A) of the Act, as is stated specifically on Form I-690.

In her decision, the director stated that the applicant was expeditiously removed from the United States in 2001. She noted that the applicant sought admission within five years of that date by filing his Form I-687 on February 4, 2005. She referred to 8 C.F.R. § 245a.2(k)(3) and stated that provisions of section 212(a)(9)(A) cannot be waived.¹

The applicant indicated on his Form I-690 Application for Waiver of Grounds of Excludability that he was expeditiously removed from the United States in 2001. He sought admission within five years of that date by filing his Form I-687 on February 4, 2005. Therefore, he is inadmissible to the United States under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), which relates to applicants who were ordered removed on arrival to the United States and sought admission within five years of their removal. Pursuant to section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A) and 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 applicants for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Therefore, the director erred in finding that the relevant provisions of section 212(a)(9) of the Act cannot be waived. This aspect of the director's decision is withdrawn.

In a separate decision, the AAO has found that the applicant is ineligible for temporary resident status because he has failed to establish that he continuously resided in the United States throughout the requisite period. In this instance there is no need to address the issue of whether the applicant has demonstrated eligibility for a waiver of inadmissibility because the applicant has been determined to be otherwise ineligible for temporary resident status. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) and *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg. Comm. 1963)

¹ The director noted that 8 C.F.R. § 245a.2(k)(3)(i) indicates that "paragraphs (9) and (10) (criminals)" of Section 212(a) of the Act may not be waived. It is noted that 8 C.F.R. § 245a.2(k)(3)(i) appears to refer to an older version of section 212(a) where paragraph (9) described applicants who are inadmissible based on criminal activity, rather than the current version of section 212(a) that describes applicants who are inadmissible based on having been deported.

relate to applications for permission to reapply for admission after deportation, but these decisions are on point and relevant to the current proceeding. In each case, the Regional Commissioner found that no purpose would be served in waiving inadmissibility because the applicant was ineligible for the overall benefit of lawful residence. The applicant has been found to be ineligible for temporary resident status. Therefore, no purpose would be served in waiving inadmissibility in this case.

It is concluded that no purpose would be served in granting the waiver application. Therefore, the director's decision to deny the waiver application shall remain undisturbed.

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