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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: NOV 0 4 2008

MSC 05 232 14271

IN RE: Applicant: [redacted]

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had acknowledged that he was inadmissible under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act (Act) because he had been expeditiously removed from the United States on November 7, 1999 and again on September 18, 2002. In order to overcome this ground of inadmissibility, the applicant submitted a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility). The director concluded that the applicant had failed to establish that such ground of inadmissibility be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, and therefore, denied the Form I-690 waiver application.

On appeal, the applicant asserts that he and his family would suffer extreme hardship if he was forced to leave this country. The applicant states that a brief in support of his appeal will be forthcoming within thirty days of the receipt of the appeal. However, the record shows that as of the date of this decision the applicant has failed to submit a statement, brief, or evidence to supplement his appeal. Therefore, the record must be considered complete.

An alien applying for adjustment to temporary resident status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Any alien who has been ordered removed under section 235(b)(1) [of the Act], section 240 [of the Act], or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible. Section 212(a)(9)(C)(i)(II) of the Act.

Section 245A(d)(2)(B)(i) of the Act permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(9)(C)(i)(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 record shows that the applicant was expeditiously removed pursuant to section 235(b)(1) of the Act on November 7, 1999 and again on September 18, 2002. Consequently, the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act. The applicant subsequently submitted a Form I-690 waiver application on May 20, 2005 in an attempt to overcome this ground of inadmissibility. On the Form I-690 waiver application, the applicant requested that this ground of inadmissibility be waived for family unity and humanitarian reasons because he was the father of two United States citizen children and claimed to have resided in this country since 1981. The director determined that the applicant had failed to submit sufficient evidence demonstrating that his removal from this country would result in extreme hardship and denied the Form I-690 waiver application on February 27, 2007.

As to the applicant's claim that he resided in this country since 1981, the record contains a Form I-687, Application for Status as a Temporary Resident, which was also filed on May 20, 2005. The record reflects that the Form I-687 application was denied by the director because the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since prior to January 1, 1982 in a separate decision issued on February 27, 2007. The record shows that the applicant's appeal to the denial of his application was subsequently dismissed by the AAO because the applicant had failed to submit sufficient credible evidence in support of such claim, had admitted that he had only previously lived in this country for one year in the Form I-867B sworn statement dated November 7, 1999, and again admitted that he had only lived in the United States for about three years in another separate Form I-867B sworn statement dated September 18, 2002. Consequently, the applicant's claim of residence in this country since 1981 must be considered to be without merit.

In support of his claim that he was the father of two children who are citizens of this country, the applicant submitted a photocopied birth certificate listing him as the father of a girl, Cristina [redacted], born in Sun Valley, California on May 26, 2002. Although the applicant provided Form 1040 federal tax returns for the 2003 and 2004 tax years listing this individual and another daughter, '[redacted]," as dependents, he failed to include any documentation reflecting that he is the father of any additional children other than [redacted] Further, it must be noted the tax returns are unsigned and contain no indication that such returns were submitted to the appropriate tax authorities.

On appeal, the applicant asserts that he and his family would suffer extreme hardship if he was forced to leave this country. The applicant notes that the court cited "preservation of family unity" as sufficient reason to grant a waiver for grounds of inadmissibility in the decision reached in Cerillo-Perez v. INS, 809 F.2d 1419 (9th Cir. 1987). As noted above, the regulation at 8 C.F.R. § 245a.2(k)(2) allows for the waiver of certain enumerated grounds of inadmissibility within the legalization program for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. However, in this case the applicant claimed he is the father of two United States citizen children but only provided the birth certificate of one daughter who is a citizen of this country. Further, the applicant failed to submit any evidence to establish that he is

the head of the household in which such children live or a non-custodial parent providing child support. Without independent evidence to corroborate the applicant's claim that his family would suffer extreme hardship if he was forced to leave the United States this charge was dismissed, the applicant's statements cannot be considered as persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act as a result of his having been expeditiously removed from this country removed pursuant to section 235(b)(1) of the Act on November 7, 1999 and again on September 18, 2002. The applicant has submitted minimal evidence to demonstrate that such ground of inadmissibility should be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest with his Form I-690 waiver application. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that the Form I-690 waiver application be granted by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. at 77.

Consequently, the applicant has failed to demonstrate that the applicable ground of inadmissibility should be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest pursuant to 8 C.F.R. § 245a.2(k)(2). After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

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