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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON Date: AUG 25 2010

IN RE: Applicant: [redacted]

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

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. 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Houston Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the adjustment application based upon the conclusion that the applicant had failed to submit a completed Form I-693, Report of Medical Examination and Vaccination Record, as well as requested documentation to establish that she continuously resided in the United States since 1990 and that she was not inadmissible as an individual who was likely to become a public charge.

On appeal, counsel argues that the failure to grant the applicant permanent resident status would result in a manifest injustice. Counsel submits documentation in support of the applicant's appeal.

Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status if the alien establishes continuous residence in the United States since the date the alien was granted such temporary residence status. *See* 8 C.F.R. § 245a.3(b).

An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687, and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director or the Director of the Regional Processing Facility, that he or she did not, in fact, abandon his or her residence in the United States during such period. 8 C.F.R. § 245a.3(b)(2).

An alien who applies for adjustment to permanent resident status must establish that he is admissable to the United States as an immigrant, and has not been convicted of any felony, or three or more misdemeanors. *See* 8 C.F.R. § 245a.3(b)(3).

In addition, an applicant for permanent resident status must establish that he or she is not ineligible for admission under one or more of the categories listed in section 212(a) of the Immigration and Nationality Act (Act). Among the categories of inadmissible aliens are those likely to become a public charge. If an applicant is determined to be inadmissible under section 212(a)(15) of the Act, he or she may still be admissible under the Special Rule. *See* 8 C.F.R. § 245a.3(g).

An alien who applies for adjustment to permanent resident status must have submitted a completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693), reflecting the results a serologic test for Human Immunodeficiency Virus (HIV) antibodies.[1] *See* 8 C.F.R. § 245a.3(d)(4).

The record shows that the applicant filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on February 16, 1988. The record further shows that the applicant was granted temporary residence on March 21, 1988. The applicant subsequently filed the Form I-698, Application to Adjust Status from Temporary to Permanent Resident Status, on September 5, 1990. At part #13 of the Form I-698 adjustment application where applicants were asked list all absences from the United States since becoming a temporary resident, the applicant indicated that she was absent from this country for 44 days when she travelled to Belize to visit relatives from July 8, 1988 to August 22, 1988.[2]

A review of the record reveals that the applicant appeared for an interview relating to her Form I-698 adjustment application at the United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) office in Houston, Texas on March 7, 2006. At the conclusion of this interview, the applicant was provided with a Form I-72, Request for Additional Evidence, which requested that she submit a completed Form I-693, Report of Medical Examination and Vaccination Record, as well as documentation to establish that she continuously resided in the United States since 1990 and that she was not inadmissible as an individual who was likely to become a public charge.

Although the director subsequently issued a notice of denial dated October 16, 2009 because the applicant had failed to provide the requested documentation, it cannot be determined from the record whether a copy of the notice was mailed to the applicant at her most current address. Consequently, the applicant's appeal shall be considered to have been timely filed.

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[1] As of January 4, 2010, HIV is no longer defined as a communicable disease of public health significance. Until July 30, 2008, section 212(a)(1)(A)(i) of the Immigration and Nationality Act (Act) had specifically required the Secretary of Health and Human Services (HHS) to classify HIV infection as a communicable disease of public health significance. Public Law 110-293 (July 30, 2008) removed this requirement. On November 2, 2009, HHS published a final rule that removes HIV infection from the definition of a communicable disease of public health significance effective as of January 4, 2010. *See* 74 FR 56547 (November 2, 2009). Therefore, as of January 4, 2010, an alien infected with HIV is no longer inadmissible to the United States under section 212(a)(1)(A)(i) of the Act.

[2] The pertinent regulation at 8 C.F.R. § 245a.3(b)(2) limits a temporary resident to a single absence from the United States of no more than 30 days unless the temporary resident can establish that he or she did not, in fact, abandon his or her residence in the United States during such period. The record contains ample evidence to establish that the applicant did not abandon her residence in the United States but instead returned to this country to resume her residence after this absence as required under 8 C.F.R. § 245a.3(b)(2).

On appeal, counsel provides a copy of the applicant's Social Security Administration Earnings Statement dated March 12, 2009. This earnings statement reflects that the applicant has earned considerable annual wages subject to Social Security withholding taxes in consecutive years since 1989. This document is considered as sufficient to satisfy the director's request that the applicant establish that she has both continuously resided in the United States since 1990 and that she was not inadmissible as an individual who was likely to become a public charge.

Counsel also submits a completed Form I-693 medical report containing the requested vaccination records relating to the applicant. Consequently, the director's denial of the Form I-698 adjustment application shall be withdrawn as the applicant has provided all requested documentation.

The applicant's appeal shall be sustained and the case shall be returned in order to continue the adjudication of her Form I-698 adjustment application. Any new decision, if adverse, shall be certified to this office for review.

ORDER: The appeal is sustained.