



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

L2



FILE:

Office: NEBRASKA SERVICE CENTER

Date: JUN 07 2006

IN RE:

APPLICATION: Form I-485, Application to Register Permanent Resident or Adjust Status, pursuant to section 586 of Public Law 106-429

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. 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 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 Viet Nam who filed a Form I-485 application in order to adjust her 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 physically present in the United States on October 1, 1997, as required by the regulation at 8 C.F.R. § 245.21(a)(3). *Decision of the Director*, dated March 2, 2006.

On appeal, the applicant asserts that she is eligible to adjust her status pursuant to section 586 of Public Law 106-429. *Applicant's Statement in Support of Appeal*, submitted March 30, 2006.

The record contains a statement from the applicant in support of the appeal; evidence that the applicant was interviewed for eligibility under the Family Reunification subprogram of the Orderly Departure Program, and; evidence of the applicant's arrivals to and departures from 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 out of the United States on October 1, 1997. Specifically, the applicant submitted a copy of a receipt for an airline ticket to show that she departed the United States on July 23, 1997. She further submitted a copy of a Form I-94 that provides that she was paroled back into the United States on October 5, 1997. As noted above, in order to establish eligibility under section 586 of Public Law 106-429, an applicant must submit evidence to show that she was physically present in the United States on October 1, 1997. 8 C.F.R. §§ 245.21(a)(3) and (g)(2). As the applicant was out of the United States on October 1, 1997, she is not eligible to adjust her status to permanent resident under section 586 of Public Law 106-429.

It is noted that the applicant's husband is a citizen of the United States. Though the applicant is not eligible to adjust her status to permanent resident under section 586 of Public Law 106-429, she is free to pursue permanent residence by all means which are available to her, such as through sponsorship by her husband.

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.