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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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FILE: [REDACTED]  
MSC-06-097-13519

Office: LOS ANGELES

Date: **APR 02 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Inadmissibility pursuant to Section 245A(d)(2)(B)(i) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(d)(2)(B)(i)

ON BEHALF OF APPLICANT:



**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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud. The applicant seeks a waiver of inadmissibility pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), based on humanitarian and public interest grounds.

The record reflects that the applicant filed a Form I-690, Application for Waiver of Grounds of Inadmissibility Under Section 245A of the Act. The district director denied the waiver application because the applicant failed to base his application on humanitarian, public interest, or family unity reasons.

On appeal, counsel asserts that the waiver application should be granted based on humanitarian and public interest grounds. The entire record was reviewed and considered in rendering the decision on this appeal.

An applicant for temporary resident status under section 245A of the Act has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant was issued a B-1/B-2 (temporary visitor) visa at the United States consulate in Islamabad, Pakistan on July 23, 2003. B-1/B-2 visas are issued to aliens who have a residence in a foreign country which s/he has no intention of abandoning and who are visiting the United States temporarily for business or temporarily for pleasure. Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B). Government records show that the applicant provided the United States consulate an address in Karachi, Pakistan in order to establish his eligibility for a B-1/B-2 visa. On October 2, 2005, the applicant arrived at Los Angeles and was admitted to the United States for six months as a B-2 visitor. The applicant's admission into the United States as a B-2 visitor is materially inconsistent with information he provided on his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, which he signed under penalty of perjury. The applicant showed on his Form I-687 application that he has continuously resided in the United States since 1981. Therefore, the

applicant willfully misrepresented a material fact when he was admitted to the United States as a temporary visitor. The AAO finds that the applicant's admission into the United States by willfully misrepresenting a material fact renders him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) 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."

On appeal, counsel asserts that the waiver application should be granted based on humanitarian and public interest grounds. Counsel states that the applicant is eligible for CSS/Newman class membership. Counsel states that the applicant was turned away by INS (Immigration and Naturalization Service) from filing an application because he was misinformed that he was not eligible for class membership on account of his trips to Mexico from 1981 to 1987. Counsel contends that if it were not for the actions of USCIS, the applicant would have filed for class membership and obtained advance parole to come to the United States. Counsel maintains that the applicant was forced into applying for a B-2 visa and returned to the United States with a B-2 visa because of the wrongful actions of USCIS. Counsel contends that under these circumstances, the applicant's waiver application should be granted for public interest reasons. Counsel further contends that the applicant has spent over 30 years in the United States, and to deprive him of benefits under CSS/Newman by denying the waiver would result in the miscarriage of justice.

The AAO finds that counsel's assertions are not confirmed by the record of proceedings. The record reflects that the applicant has been granted an advance parole travel document on at least three occasions: February 11, 1993, February 12, 1998 and January 10, 2007. Furthermore, counsel has not furnished any documentary evidence to support his claim that the applicant was denied advance parole. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that although there is a liberal standard for waiver applications under section 245A of the Act, such waivers are not automatically granted to all legalization applicants. The applicant must show that the waiver should be granted for humanitarian purposes, to assure family unity<sup>1</sup>, or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i). Counsel contends that the applicant is eligible for a waiver based on humanitarian grounds. However, he has failed to articulate the humanitarian purpose that

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<sup>1</sup> The term "family unity" means maintaining the family group without deviation or change. 8 C.F.R. § 245a.1(m). The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group. *Id.*

would warrant granting a waiver in this case. Counsel also contends that the applicant is eligible for a waiver based on public interest grounds. The term "in the public interest" is not defined in the Act or the regulations. In the precedent decision *Matter of P-*, the court adopted the definition at page 1106 of the fifth edition of Black's Law Dictionary to determine that "public interest" was "something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected." *Matter of P-*, 19 I&N Dec. 823, at 828 (Comm. 1988). Counsel's assertions do not demonstrate that granting the applicant a waiver would be of interest to the public as defined herein.

Based upon the foregoing, the AAO finds that the applicant has failed to meet his burden of proof to establish his eligibility for a waiver of inadmissibility under section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i). Accordingly, the AAO affirms the director's decision to deny the waiver application and the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.