



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[REDACTED]

LI

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

APR 15 2009

MSC-05-292-14289

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:

[REDACTED]

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 is 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 provide any humanitarian, public interest or family unity reasons for the approval of her waiver.

On appeal, counsel asserts that the applicant's waiver should be declared to be in the public interest or worthy of humanitarian consideration in light of her elderly age and the passage of time since the violation. 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 Mexican Border Crossing Identification Card and B-1/B-2 Nonimmigrant Visa at the United States Embassy in Mexico on May 25, 1984. On June 29, 1984, the applicant arrived at Los Angeles and was admitted to the United States as a temporary visitor. 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). Similarly, Mexican Border Crossing Cards are issued to citizens of Mexico who seek to travel temporarily to the United States for business or pleasure. *See* 8 C.F.R. § 212.6(a). The applicant's procurement of a Border Crossing Card and B1/B2 visa, and her subsequent admission into the United States as a temporary visitor, are materially inconsistent with the

applicant's underlying Form I-687 application. The applicant filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, on July 19, 2005. The application shows that she has continuously resided in the United States since 1977. The applicant therefore willfully misrepresented material facts in order to procure a Border Crossing Card and B-1/B-2 visa for admission to the United States as a temporary visitor. The applicant's willful misrepresentation of material facts renders her 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 humanitarian reasons justify the granting of the waiver because the applicant has been residing in the United States for over 30 years, and the misrepresentation occurred many years ago. Counsel notes that the applicant has extended family members that live in the United States, including a naturalized brother and nieces and nephews. Counsel contends that the director abused her discretion by indicating that the waiver would be denied because the applicant did not list a U.S. Citizen or permanent resident spouse, child or parent. Counsel states that the legal standard is humanitarian or public interest. Counsel contends that the applicant has resided in the United States most of her life, has contributed to the economy through her labor, has never been convicted of any crime, and has extended family in the United States. Counsel maintains that the applicant's waiver should be declared to be in the public interest or worthy of humanitarian consideration in light of her elderly age and the passage of time since the violation.

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, 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). The AAO will evaluate the applicant's eligibility for a waiver under each category.¹

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.* **Section 10 of the waiver application requests**

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

applicants to list all immediate relatives in the United States (i.e. parents, spouse and children). The applicant left this section of the application blank, indicating that she does not have any qualifying family members. Counsel asserts that the applicant has a naturalized brother, nieces and nephews. However, the term family unity for legalization purposes has been defined to only include immediate family members. As such, the applicant has not demonstrated her eligibility for a waiver based on family unity.

The term "in the public interest" is not defined in the Act or the regulations. In the precedent decision *Matter of P-*, the Commissioner 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, 828 (Comm. 1988). The Commissioner held that the alien established it would be in the public interest to grant his waiver application because he contributed to his community financially by creating jobs and through public activities. *See Matter of P-*, 19 I&N Dec. at 823. Counsel asserts that the applicant has resided in the United States most of her life and has contributed to the economy through her labor. Counsel's assertion that the applicant has contributed to the economy is not supported by the record. At part 33 of the Form I-687 application, applicants are requested to list their employment in the United States since entry. In response to this question, the applicant showed that she has been self-employed in an unidentified occupation since 2000. The applicant listed her annual wage as \$5,200.00, which is under the U.S. Department of Health and Human Service's 2005 federal poverty guidelines.² In addition, the applicant has not shown that she filed tax returns related to this employment. It is further noted that the applicant failed to detail her involvement in any public activities. At part 31 of the Form I-687 application, applicants are requested to list their affiliations with any clubs, organizations, churches, unions, business, etc. In response to this question, the applicant showed that she was involved with [REDACTED] in Whittier, California from 1990 to 1998. However, she failed to explain how she contributed to the community through her involvement with this organization. Therefore, the applicant has failed to demonstrate that granting her waiver would be in the public interest.

The term "humanitarian" is also not defined in the Act or the regulations. The AAO notes that the Act provides for a number of humanitarian motivated mechanisms to assist individuals in need of shelter or aid from various disasters and oppression, such as asylum/refugee processing, temporary protected status and humanitarian parole.³ Webster's New College Dictionary defines humanitarian as the promotion of human welfare and the advancement of social reform.⁴ Counsel contends that the applicant should be granted the waiver based on humanitarian considerations in light of her elderly age and the passage of time since the violation. Counsel further contends that the applicant is a woman who has lived in the United States for most of her

² The U.S. Department of Health and Human Service's 2005 federal poverty guidelines reflect that an annual income of less than \$9,570 for a family of one constitutes poverty, thus allowing for financial eligibility for certain federal program purposes. *See* <http://aspe.hhs.gov/poverty/05poverty.shtml>.

³ *See* www.uscis.gov

⁴ Webster's New College Dictionary (3d ed., Houghton Mifflin Harcourt 2008).

life, who has contributed to the economy through her labor, who has never been convicted of a crime, and who has extended family in the United States. The AAO has carefully considered counsel's assertions and finds that these assertions alone fail to demonstrate the applicant's eligibility for a waiver based on humanitarian grounds. Counsel has failed to provide any supporting documentation to support his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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 applicant has failed to provide any documentary evidence of her family ties to the United States, such as affidavits from her family members and evidence that they reside in the United States. Further, she has not provided details on her current occupation and employment. Nor has she presented evidence of her tax returns. Finally, the AAO finds that a 60 year old individual is not of "elderly age" as asserted by counsel. There is no indication that the applicant suffers from a health condition that warrants her to remain in the United States or that she would suffer any type of harm if she returned to Mexico. Given the lack of evidence, the applicant has failed to demonstrate her eligibility for a waiver based on humanitarian grounds.

Based upon the foregoing, the AAO finds that the applicant has failed to meet her burden of proof to establish her 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.