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] Office: LOS ANGELES Date: DEC 0 3 2009

MSC-05-183-11174

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant submitted Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility) concurrently with the Form I-687 Application for Status as a Temporary Resident. The director denied the waiver because the applicant did not describe any family unity, humanitarian, or public interest reasons for granting a waiver.

The applicant has submitted additional evidence on appeal.

Preliminarily, the AAO notes that on the Form I-690 the applicant checked the box indicating that he was inadmissible to the United States under section 212(a)(6)(C)(i) or (ii) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i) or (ii), which provides that an alien who has made a material misrepresentation to gain an immigration benefit is inadmissible under certain circumstances.

The director did not make any finding of inadmissibility. Other than the applicant's statement on the Form 1-690, the record does not establish that the applicant is subject to any grounds of inadmissibility. Notwithstanding that the grounds of inadmissibility are less than clear, the AAO will accept the appeal based on the applicant's statement of material misrepresentation to gain an immigration benefit, which renders the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

An applicant 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 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).

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, by fraud or willful misrepresentation of 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 immigration benefit, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant states that he sought to procure admission into the Unites States by misrepresentation. Consequently, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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." 8 C.F.R. § 245a.2(k)(2).

At his interview in support of his I-687 application, the applicant stated that he has never been married, and that he has been in the United States since 1972. The record reflects that the director denied the Form I-687 application because the applicant had not demonstrated his continuous residence in the United States in an unlawful status since prior to January 1, 1982. The AAO dismissed a subsequent appeal. Consequently, the applicant's claim of residence in this country since 1972 is without merit. On appeal, the applicant states that his mother and brothers are all citizens of the United States, and that he wishes to be integrated with his family.[1] In the I-690 waiver application, the applicant states that the reason he should be granted a waiver is that he needs to apply again during the amnesty open period of May 24, 2004 to May 23, 2005. In the I-690 waiver application the applicant does not list any immediate relatives in the United States.

The director determined that the applicant has failed to submit sufficient evidence demonstrating any family unity, humanitarian or public interest reasons for granting a waiver.

To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). By his admission, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact in order to obtain an immigration benefit. The applicant has not submitted 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. 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. 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.[2]

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

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[1] The applicant has attached the birth certificate of his mother, who was born in Arizona. The applicant was born in Mexico when his mother was 16 years old. The record does not contain any evidence that the applicant's mother resided or was physically present in the United States prior to the applicant's birth for a period sufficient for the applicant to have derived United States citizenship at birth. *See* Section 301(g) of the Immigration and Nationality Act, as amended.

[2] Additionally, as stated above, under the provisions of section 245A of the Act, the applicant has the burden of proving by a preponderance of the evidence not only that he is admissible to the United States but that he has resided in the United States for the requisite period and is otherwise eligible for adjustment of status. Therefore, since the applicant has been found to be ineligible for temporary resident status because he has failed to establish continuous residence for the requisite period, the issue of the applicant's admissibility which forms the basis of the waiver application is moot.