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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: JAN 14 2009

MSC 06 101 22980

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:

[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 forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Form I-690, Application for Waiver of Grounds of Excludability, (currently referred to as grounds of inadmissibility), was denied by the District Director (director), Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 9, 2006, the applicant submitted the Form I-690. On March 26, 2007, the director denied the request for a waiver of grounds of inadmissibility for the following reasons: the applicant does not have immediate relatives in the United States such that he should receive this benefit based on family unity purposes; also, the applicant asserted that the waiver should be granted for humanitarian purposes, but he did not identify specific hardship that would result if the waiver were not granted.

First, the record confirms that an Immigration Judge ordered the applicant removed in *absentia* on February 18, 1999. With the Form I-687 filed on January 9, 2006, the applicant is seeking to be admitted to the United States as a lawful temporary resident. According to the Form I-687, signed by the applicant under penalty of perjury on December 31, 2005, at page 4, part 32, during October 2002, the applicant departed the United States. As such, he departed the United States while the February 18, 1999 order of removal was outstanding. Also, by his own admission, he departed the United States after being present in this country without any legal status for over a year.

Section 212(a)(9)(A)(ii) of the Act, regarding aliens who have been previously ordered removed, provides in pertinent part:

> Any alien not described in clause (i) [which refers to arriving aliens who are removed upon arrival or removed subsequent to proceedings initiated upon arrival] who – . . .
>
> (II) departed the United States while an order of removal was outstanding,
>
> and who seeks admission within 10 years of the date of such alien's departure . . . is inadmissible.

Thus, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act. On the Form I-690, the applicant only specifically requested that the ground of inadmissibility set forth at section 212(a)(9)(B) of the Act be waived on his behalf. However, this office will consider his Form I-690 as a request for a waiver of any ground of inadmissibility that applies to him, which may be waived.

Section 212(a)(9)(B)(i) of the Act provides in pertinent part:

> Any alien . . . who– . . .
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

It appears that the applicant in this matter believed that he was also inadmissible under section 212(a)(9)(B) based on his unlawful presence in the United States followed by a departure and request for admission. This is not the case. U.S. Citizenship and Immigration Services (USCIS) has designated

applicants for temporary resident status under section 245A of the Act to be in a period of authorized stay, for purposes of analyzing grounds of inadmissibility, pending the final adjudication of their application. This period of authorized stay is applicable to applications for temporary resident status under section 245A of the Act that are pending appeal before the AAO. Therefore, the applicant is not subject to this ground of inadmissibility.

On appeal, the applicant asserted that his request for a waiver of any grounds of inadmissibility that apply to him should be granted because: he has resided in the United States since 1981; because he is a person of good moral character; and because it would likely lower his standard of living and that of his family, if the request were not granted.

8 C.F.R. § 245a.2(k)(2) states that the Attorney General (now Department of Homeland Security Secretary) may only waive provisions of section 212(a) of the Act for individual legalization applicants for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest.

According to the record, the applicant's wife and two adult children are Indian citizens who reside in India. Thus, there are no family unity concerns to consider in the present matter. Also, any lower standard of living that may result if the waiver is not granted is not a serious enough consequence to warrant a granting of this case based on humanitarian purposes.

Moreover, the record indicates that the applicant made a special request of the Executive Office of Immigration Review (EOIR) Houston, Texas that he be granted a change of venue such that his immigration proceedings might take place in Southern California, near where he was residing, rather than in Houston, Texas, where he was placed into proceedings upon arrival to that port of entry. The EOIR granted this request to better serve the applicant and his attorney with the understanding that the applicant would attend his immigration hearing. The record indicates that the applicant's counsel received notice of the applicant's February 18, 1999 hearing at his address of record. That notice informed the applicant that:

> Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:
> 1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.
> 2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Naturalization Service establishes by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

However, the applicant and his counsel failed to attend the applicant's February 18, 1999 hearing. Thus, the AAO finds that the applicant has exhibited a pattern of behavior that shows a disregard for the laws of the United States and that it would not be in the public interest to grant his request for a waiver of grounds of inadmissibility that he might be admitted into the United States.

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