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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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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

MSC-05-343-11073

**OCT 08 2009**

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. 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 New York 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.<sup>1</sup>

The applicant has not submitted any additional evidence on appeal.

Preliminarily, the AAO notes that on the Form I-690 the applicant stated that he has been living in the United States without any legal status or a valid visa. 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 applicant also checked the box indicating that he was inadmissible to the United States under section 212(a)(9)(B)(i)(I) or (i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) or (i)(II), which provides that an alien who has been unlawfully present in the United States is inadmissible under certain circumstances.

The record does not establish that the applicant is seeking readmission into the United States after a period of unlawful presence and that he is inadmissible under section 212(a)(9)(B)(i)(I) or (i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) or (i)(II).<sup>2</sup> The director did not make any finding of inadmissibility. However, the record does establish that the applicant misrepresented a material fact to gain an immigration benefit and that he is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record reveals that at the time of his interview on the Form I-687, application for status as a temporary resident, the applicant stated that he first came to the United States in October 1981 and resided in the United States from that time for the duration of the requisite statutory period. However, in 1993 the applicant filed an I-589 request for asylum.<sup>3</sup> The applicant filed with that application a Form G-325A, biographic information sheet. The Form G325A requests applicants to list their last address outside the United States of more than one year. On the form the applicant stated that he resided in Ferozpur, Punjab from the time of his birth until a date after the requisite statutory period.<sup>4</sup>

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<sup>1</sup> The director also found that, 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. However, the director adjudicated the waiver application on the merits. Therefore, the AAO will adjudicate the appeal of the denied application.

<sup>2</sup> United States Citizenship & Immigration Services (USCIS) has designated applicants for temporary resident status under section 245A of the Act to be in a period of authorized stay pending the final adjudication of their application, including any period of appeal.

<sup>3</sup> In the I-589 application the applicant lists an arrival in the United States on December 20, 1992. However, in the I-687 application the applicant does not list any absence from the United States in 1992.

<sup>4</sup> The applicant stated that he lived in Ferozpur, Punjab from the time of his birth until November 1992.

Furthermore, in 1996 the applicant filed a Form I-485 application to adjust to permanent resident status based on an underlying Form I-130 petition for alien relative. The applicant filed with that application a Form G-325A, biographic information sheet, listing his last address outside the United States of more than one year. On the form the applicant stated that he resided in Ferozpur, Punjab from the time of his birth until a date after the requisite statutory period.<sup>5</sup> Therefore, the AAO will accept the appeal based on the information contained in the record which establishes that the applicant misrepresented a material fact to gain an immigration benefit and that he is 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).

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).

The record reveals that the applicant sought to procure admission into the United States by misrepresentation. Consequently, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. In the Form I-690 waiver application, the applicant requested that this ground of inadmissibility be waived because he has been in the United States since 1981 and he has social ties to the community. 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. In addition, the record contains a Form I-687, Application for Status as a Temporary Resident, which was filed on the same date as the waiver application. The record reflects that the director denied the Form I-687 application

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<sup>5</sup> The applicant stated that he lived in Ferozpur, Punjab from the time of his birth until October 1990. The AAO notes that both G-325A forms are also inconsistent with each other.

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 1981 is without merit.

On appeal, the applicant has not submitted any additional evidence in support of granting the waiver application for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The applicant's statements cannot be considered as persuasive. 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). 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. The applicant has failed to submit sufficient documentation to establish by a preponderance of the evidence that the Form I-690 waiver application should be approved. *See*, 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.<sup>6</sup>

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.

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

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<sup>6</sup> Additionally, as stated above, pursuant to 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. The AAO agrees with the director that 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.