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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
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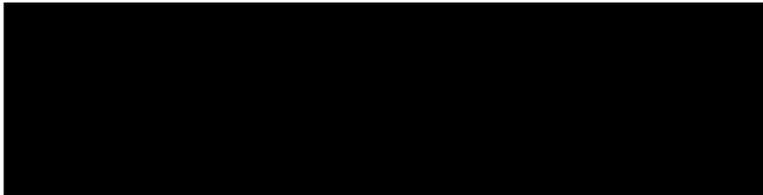
Date: MAR 24 2010

IN RE: Applicant:



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:



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 accordingly.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Waiver of Inadmissibility was denied by the Director, Seattle. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The director determined that the applicant was inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i) of the Immigration and Nationality Act (Act) because she was unlawfully present in the United States without being inspected or admitted. The director concluded that the applicant had failed to establish her eligibility for a waiver due to humanitarian reasons, family unity, or public interest considerations. Therefore, the director denied the Form I-690 waiver application.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(A)(i) of the Act, because the provision did not exist at the time the legalization provisions were first implemented. Counsel argues alternatively that the waiver should be approved.

The AAO agrees that the applicant is not inadmissible under section 212(a)(6)(A)(i) of the Act. The United States Citizenship & Immigration Services (USCIS) does not apply this ground of inadmissibility to applicants for legalization under section 245A of the Act, 8 U.S.C. § 1255a, as to do so would defeat the purpose of the legislation, which requires that the applicant show he or she is present in the country illegally. The instructions on the current Form I-687 state that this ground of inadmissibility is not applicable.

The applicant indicated on her Form I-690 that she was applying for a waiver of inadmissibility under 212(a)(9)(B)(i)(I) or (II) (aliens unlawfully present in the United States for at least 180 days but less than one year, and who seek readmission to the United States within 3 years of the date of the last departure; and those unlawfully present for more than a year and who seek readmission within 10 years of the date of the last departure). The director determined that the applicant was not inadmissible under these provisions as she had filed her application for legalization more than 10 years after her last departure from the United States. The AAO agrees with the director that the applicant is not inadmissible under section 212(a)(9)(B)(i)(I) or (II), but agrees with counsel that the director's reasoning is erroneous. USCIS considers that an applicant who has filed for relief under section 245A of the Act is in a period of authorized stay, and does not accrue unlawful presence, as long as the application and any administrative appeal remain pending.

The director's determination that the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act is in error and shall be withdrawn. Consequently, the applicant is not inadmissible and the Form I-690 is moot. The applicant's appeal from the denial of the I-690 must also be considered moot.

ORDER: The appeal is dismissed as moot.