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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED] Office: LOS ANGELES

Date: FEB 07 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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. 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.

A handwritten signature in ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Resident Status, which was subsequently denied by the director of the Los Angeles office. The application is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On August 19, 2010, the director of the Los Angeles office denied the application, finding that the applicant is not eligible for adjustment from temporary to permanent resident status because he is inadmissible as a public charge. See section 212(a)(4)(A) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1182(a)(4)(A).¹

On appeal, the applicant submitted additional evidence in support of his assertion that he will not become a public charge, and is therefore not inadmissible pursuant to section 212(a)(4)(A) of the Act. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

An applicant must establish that he is not ineligible for admission under one or more of the categories listed in section 212(a) of the Immigration and Nationality Act (Act). 8 U.S.C. § 1182(a). Among the categories of inadmissible aliens are those likely to become a public charge. If an applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. See 8 C.F.R. 245a.18(c)(2)(iv).

The regulations at 8 C.F.R. § 245a.18(d)(1), 8 C.F.R. § 245a.18(d)(2), and 8 C.F.R. § 245a.18(d)(3) provide the factors to be considered in determining whether an applicant is likely to become a public charge and whether the special rule applies.

(1) In determining whether an alien is "likely to become a public charge," financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

¹ The director's decision also infers that the applicant abandoned the application by failing to respond to a request for further evidence establishing that he is not inadmissible as a public charge. The director erred in inferring that the denial of the application is based, in whole or in part, on abandonment pursuant to 8 C.F.R. § 103.2(b)(13). On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. See, *CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM. However, the director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

(2) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form 1-134, Affidavit of Support. The failure to submit Form 1-134 shall not constitute an adverse factor.

The burden is on the applicant to establish that he is not likely to become a public charge. The record of proceeding contains a statement from the applicant dated October 9, 1995, stating that he received public assistance in the form of cash assistance and food stamps in May 1991, September 1991, and indigent medical services in August 1992, some of which he has repaid. In a letter dated December 30, 1992, the applicant stated that his main source of income was Social Security disability benefits. The record does not reveal whether the applicant is still receiving Social Security benefits. The record does not contain an affidavit of support filed on the applicant's behalf. On appeal, the applicant states that he has been residing at the Orange County Recue Mission since February 2008. The applicant has submitted two letters from a manager at the mission, stating that the applicant receives free room and board in return for performing limited duties at the mission. The applicant is currently unemployed, and he states, "Whether I could hold employment in the near future that could generate sufficient income to satisfy my living expenses needs to be decided by the involved professionals."

The record contains medical reports dated April 28, 1994 and June 29, 1994 from [REDACTED], stating that the applicant had episodic treatment for mental illness from September 1973 through 1994. The applicant was hospitalized on three occasions, in 1973, 1987 and 1991, respectively, for an exacerbation of his condition. From August 1991 through 1994 the applicant was treated on an outpatient basis for bipolar affective disorder with psychotic features, and his illness remained stable with medication. The record also contains a psychiatric evaluation dated September 11, 2010 from [REDACTED] stating that the applicant suffers from

nonspecific psychosis. The doctor notes that the applicant was treated in 2007 and 2008 for possible bipolar disorder, but his case was closed because he was not requesting services. Further, the record contains an August 5, 2009 assessment from Med-Cal Specialty Mental Health Program, finding the applicant ineligible for specialty mental health services from Orange County because, "Your mental health condition does not cause problems for you in your daily life that are serious enough to make you eligible..."

The record contains copies of a substitute W-2 form and a federal income tax return for 2007, a W-2 form and a federal income tax return for 2006, and W-2 forms and a federal income tax return for 2004. According to the record, the applicant's adjusted gross income for 2007, 2006 and 2004 was \$3,488, \$10,886 and \$11,734, respectively. According to the 2007 Poverty Guidelines issued by the Department of Health and Human Services (HHS), the minimum income requirement for a household of one that applies for 2007, 2006 and 2004 is \$10,830, \$9,800 and \$9,310, respectively. Although the record contains copies of tax records pertaining to the applicant's earnings from 1972 to 1986, the record does not contain any evidence of earnings between 1986 and 2004. The record shows that the applicant attended community college in California from approximately 1993 to 1998. The applicant's resume lists employment in "HVAC design" through March 1991, employment as a sales associate from 2002 to 2007, and building maintenance/front desk receptionist at a homeless shelter where he resided from May 2007 to February 2008.

The applicant is sixty-two years old and appeared to be in good health as reflected in the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated May 1, 1988 that is contained in the record. The applicant stated that he was never married at part #11 of the I-687 application and indicated that both of his parents were deceased at parts #20 and #21 of the application. The record does not contain any evidence to reflect that the applicant has children. The record contains evidence that the applicant has obtained some college-level education. The record does not contain any evidence that he possesses any particular skill. The applicant has not submitted any documentation such as tax returns or bank statements to establish any current employment and demonstrate his means of economic support. The applicant has not submitted a Form I-134 affidavit of support from a family member guaranteeing complete or partial financial support. Consequently, it must be concluded that the applicant has failed to meet his burden in establishing proof of financial responsibility.

The record reveals that on February 1, 1982 the applicant pleaded not guilty to violations of the Massachusetts Motor Vehicle Code, as follows: *Under the Influence, License not with Operator, Operator Endangering Public and Operating an Unregistered Vehicle*. On March 15, 1983 the case was dismissed. (Commonwealth of Massachusetts, Cambridge District Court, motor vehicle case numbers 0313, 0314, 0315 and 0316.) Because the application will be denied on other grounds, the AAO will not request court dispositions for these charges. The record also reveals that on February 10, 2004, the applicant was charged with violations of the California Penal Code (PC), as follows: section 640(b)(1)(PC), *Evasion of Payment of Fare*, and section 640(b)(6)(PC), *Willfully Disturbing Others*. On March 5, 2004, the applicant pleaded guilty to the charges, each of which is an infraction, and was ordered to pay a fine for each violation. On

December 24, 2006, the case was closed. (Superior Court of California, Orange County, case number [REDACTED]) The record also reveals that on November 22, 2006, the applicant was charged with *Crossing between Controlled Intersections*, in violation of section 21955 of the California Vehicle Code. On February 8, 2007, the applicant pleaded guilty to the charge, an infraction, and was sentenced to perform 4 hours of community service in lieu of payment of a fine. On April 13, 2007 the case was closed. (Superior Court of California, Orange County, case number [REDACTED])

Based upon the above, the AAO agrees with the director that the applicant is inadmissible as one who is likely to become a public charge under section 212(a)(4) the Act. The applicant is, therefore, ineligible for adjustment from temporary to permanent resident status under section 245A of the Act on this basis.³

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

³ In addition, it appears from the evidence in the record that the applicant entered the United States on a J-1 nonimmigrant exchange visitor visa, and is subject to the two-year foreign residence requirement. The applicant is ineligible for permanent resident status for this additional reason.