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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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FILE:

Office: FRESNO

Date:

JAN 05 2011

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. 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 Fresno office, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On May 28, 2002, the applicant filed a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act. On October 28, 2002, the applicant submitted the I-690 application. On July 22, 2009, the director denied the I-485 application, finding that the applicant had not established by a preponderance of the evidence that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988. The applicant appealed the decision to the AAO, and the AAO dismissed the appeal.

On appeal, counsel for the applicant states that the director denied the I-485 application in error.

The AAO notes that the applicant has filed the Form I-690, application for waiver of the grounds of excludability, based upon grounds of inadmissibility contained at §212(a)(6)(C)(i) of the Act, , 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to obtain an immigration benefit or entry into the United States by fraud or willfully misrepresenting a material fact.

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.

Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i)<sup>1</sup>, the I-485 application was denied, instead, pursuant to section 245A(a)(2)(A) of the Act, because the applicant has not established continuous residence in the United States for the requisite period. Further, the AAO has dismissed the applicant's appeal. Therefore, the issue of the applicant's admissibility which is the basis of the waiver application is moot.

Accordingly, the appeal will be dismissed.<sup>2</sup>

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

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<sup>1</sup> 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).

<sup>2</sup> Additionally, the applicant has not submitted any 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. 8 C.F.R. § 245a.2(k)(2). 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. Consequently, the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. See, 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.