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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



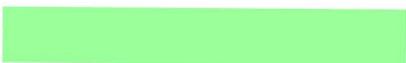
Date: JAN 08 2014

Office: HOUSTON

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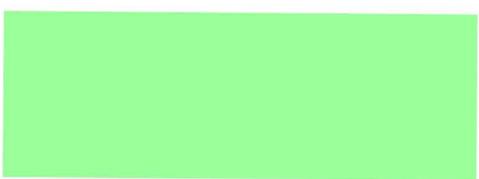


IN RE: Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Houston Field Office Director (director) denied the application for adjustment from temporary resident status to permanent resident status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application, finding the applicant failed to demonstrate his admissibility and his continuous residence in the United States between the date he became a temporary resident and the date he filed his application for adjustment from temporary to permanent resident status.

On appeal, the applicant provides evidence to establish his admissibility and his continuous residence.

Any alien who has been lawfully admitted for temporary resident status may apply for adjustment of status if the alien: establishes continuous residence in the United States since the date the alien was granted such temporary resident status, and is admissible. *See* 8 C.F.R. § 245a.3(b)(1) and (3).

The first issue to address is whether the applicant has established his continuous residence in the United States since the date he was granted temporary status (February 16, 1988) and the date he applied (April 27, 1990) or became eligible for permanent resident status (September 16, 1989), whichever is later. Therefore, he is required to establish his continuous residence in the United States from February 16, 1988 to April 27, 1990.

In support of his claim of continuous residence, the applicant submitted an employment verification letter indicating he was employed from February 27, 1981 through February 22, 2010 at [REDACTED]. He also submitted certified records from the Social Security Administration showing he has worked from 1988 through 2010. The applicant has established his requisite continuous residence in the United States from February 16, 1988 to April 27, 1990. He has overcome this basis of the director's decision to deny his application.

The next issue to be addressed is whether the applicant established that he is admissible. The director determined that the applicant had failed to show he was not likely to become a public charge. Persons likely to become a public charge are inadmissible. *See* section 212(a)(4) of the Act, 8 U.S.C. § 1182(a)(4).

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.

(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 [the Immigration Reform Control Act] 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 applicant has established a long consistent employment history stretching from 1988 through 2010. According to his medical examination report, he does not suffer from any chronic health conditions. He indicated under oath that he has never received government public assistance. The applicant is now 72 years of age. He is eligible for Social Security retirement benefits. He also accrued deferred compensation during his employment. Given the totality of his circumstances, he meets the requirements for the Special Rule.

The applicant has overcome the director's basis for denying the application.

The applicant has established his eligibility for adjustment from temporary to permanent resident status. The appeal is sustained.

ORDER: The appeal is sustained.