

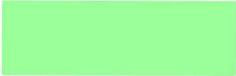
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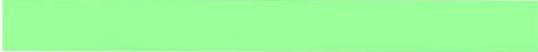
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **NOV 12 2014** Office: BOSTON

FILE: 

IN RE: Applicant: 

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:

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 "R. Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Boston Field Office Director denied the application for adjustment from temporary to permanent resident status. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision and remand the matter to the field office for further review and issuance of a new decision.

The director denied the Form I-698 application, finding that the applicant had been convicted of a felony and was therefore inadmissible to the United States.

Counsel for the applicant submitted a brief in support of the appeal, asserting that the applicant was not convicted for immigration purposes. In support of this assertion, counsel offered partial court documents and one page of a three-page motion for a new trial.

On August 8, 2014, we issued a notice of intent to deny (NOID)/request for evidence (RFE), citing to another criminal charge. Namely, we noted that on April 17, 1995, the applicant was charged with violating Chapter 265, section 23.1 of the General Laws of Massachusetts, rape and abuse of child under 16, and indecent assault and battery on child under 14, in violation of section 13b.1, Chapter 265, section 13b.1 of the Massachusetts General Laws. We instructed the applicant to provide the full criminal complaint, written plea agreement, transcript of plea colloquy, and any explicit factual finding(s) of the judge to which the applicant assented. We also instructed the applicant to provide the final court dispositions for these charges.

In addition, we found that the applicant did not submit sufficient evidence to support her claim of continuous unlawful residence in the United States during the qualifying time period.

In response, the applicant provided sufficient evidence to overcome the criminal grounds for denial. The applicant also provided additional evidence to address the issue of her continuous unlawful residence.

Accordingly, we will withdraw the director's decision, as the applicant has overcome the grounds for denial.

Despite our decision to withdraw the director's decision, the record indicates that the applicant has failed to submit sufficient evidence to establish that she is admissible to the United States. Specifically, the applicant must establish that she is not ineligible for admission under one or more of the categories listed in section 212(a) of the 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).

As previously stated in our NOID/RFE notice, 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 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.

We further explained that the applicant maintains the burden of establishing that she is not likely to become a public charge. We acknowledged the applicant's prior submission of a September 12, 2012 letter from [REDACTED] stating that she employed the applicant for the past 14 months as a daily caregiver for her aging father and her hope to employ the applicant in the future on a temporary, as-needed basis. We also acknowledged the applicant's submission of a September 7, 2012 letter from [REDACTED] the applicant's daughter, stating that she will assist with the applicant's expenses, if the need arises. We noted that the applicant did not submit any employment or financial documentation to support the assertions made by her daughter. We therefore asked the applicant to provide evidence demonstrating that she will not become a public charge should she be granted lawful permanent resident status in the United States. In

response, the applicant submitted a Form I-134, Affidavit of Support, completed and signed by her daughter on August 19, 2014. Ms. [REDACTED] indicated that she earned an annual income of \$36,400 and had \$100 in savings and \$3,500 worth of personal property. In addition, the applicant provided her daughter's pay stubs for three two-week periods in July and August 2014 showing year-to-date pretax earnings of \$14,754.44 as of August 9, 2014. However, the evidence submitted is not in compliance with the general instructions of the Form I-134, which indicates that if the affidavit of support is based on the filing individual's employment, that individual must provide a statement from her employer on business stationary showing: (1) the date and nature of employment; (2) the salary paid; and (3) whether the position is temporary or permanent.¹ The record does not indicate that the applicant's daughter, who filed the Form I-134, complied with the filing instructions. In addition, the earnings shown in Ms. [REDACTED] pay stubs do not corroborate her claim that she receives an annual salary of \$36,400.

The director must make the initial determinations on this issue. So far, the director has not done so. Therefore, we will remand this matter to the director for a new decision. The director should request any additional evidence deemed warranted and allow the petitioner to submit such evidence within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision, dated December 17, 2013, is withdrawn. The application is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

¹ See Instructions for Form I-134, Affidavit of Support, p. 1.