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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: Seattle

Date:

MAR 24 2009

MSC 05 305 17612

IN RE:

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:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the Director, Seattle, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed the application for waiver of grounds of excludability (Form I-690). The director found that the applicant was ineligible for the waiver, as he had not established that his wife and four children had been granted asylee status in the United States. On appeal, the applicant submits a declaration from [REDACTED] who indicates that he resided with the applicant in California and a declaration from [REDACTED] who states that the applicant is a good family man.

An alien 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 periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Any alien who has been ordered removed under section 235(b)(1) [of the Act], section 240 [of the Act], or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible. Section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

Section 245A(d)(2)(B)(i) of the Act permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(9)(A)(ii) 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).

The record shows that the applicant was placed in deportation proceedings, that the immigration judge (IJ) denied the applicant's request for asylum and granted his request for voluntary departure with an alternate order of deportation. The Board of Immigration Appeals (BIA) dismissed a subsequent appeal, and ordered the applicant to leave the United States voluntarily on or before March 16, 1999, with an alternate order of deportation should the applicant fail to depart. The applicant failed to depart, and is thus inadmissible under section 212(a)(9)(A)(ii) of

the Act because he is subject to the alternate order of deportation issued by the IJ and affirmed by the BIA. The applicant submitted a Form I-690 waiver application in an attempt to overcome this ground of inadmissibility. On the Form I-690 waiver application, the applicant requested that this ground of inadmissibility be waived for family unity reasons. He stated that his wife and minor children are in the United States legally as asylees. The director determined that the applicant failed to show the legal status of his wife and minor children in the United States, and that the application for a waiver should be denied. The AAO agrees.

The applicant provided no evidence in support of his claim that he has immediate family members legally in the United States, or that the waiver should be approved for humanitarian reasons or in the public interest. Without independent evidence to corroborate the applicant's claim that his family would suffer if he was forced to leave the United States, the applicant's statements cannot be considered as persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act because he was ordered deported by an immigration judge. The applicant has submitted no evidence with his Form I-690 waiver application 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. 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proving by a preponderance of the evidence that the Form I-690 waiver application should be granted. 8 C.F.R. § 245a.2(d)(5); *Matter of E- M-*, 20 I&N Dec. at 77.

Consequently, the applicant has failed to demonstrate that the applicable ground of inadmissibility should be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest pursuant to 8 C.F.R. § 245a.2(k)(2). After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

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