

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



L8

Date: JAN 26 2012 office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Inadmissibility pursuant to Section 245A(d)(2)(B)(i) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(d)(2)(B)(i)

ON BEHALF OF APPLICANT:

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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Western Service Center Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i)¹ of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud. The applicant asserts that she is not inadmissible but alternatively seeks a waiver of inadmissibility pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), based on family unity, humanitarian and public interest grounds.

The record reflects that the applicant filed a Form I-690, Application for Waiver of Grounds of Inadmissibility under Section 245A of the Act. The director denied the waiver application. The applicant appealed the director's decision. On appeal, the AAO remanded the matter to the director. The matter is again before the AAO.

On appeal, counsel asserts that the waiver application should be granted based on family unity, humanitarian and public interest grounds. The entire record was reviewed and considered in rendering the decision on this appeal.

An applicant for temporary resident status under section 245A of the Act 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. 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).

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."

On appeal, counsel asserts that the waiver application should be granted based on family unity, humanitarian and public interest grounds.

The AAO notes that although there is a liberal standard for waiver applications under section 245A of the Act, such waivers are not automatically granted to all legalization applicants. The applicant must show that the waiver should be granted for humanitarian purposes, to assure

¹ Section 212(a)(6)(C) of the Act provides: "Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."

family unity², or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i).

The applicant has met her burden of proof to show she warrants the grant of a waiver.

The applicant submitted the birth certificates of her two United States born children [REDACTED] and [REDACTED]. Her third child, [REDACTED] is a naturalized United States citizen. [REDACTED] resides with her mother, the applicant. The youngest child is currently enrolled at the University of California, Los Angeles. The other two children are college graduates. Although the children are now adults, they were minors when she filed her Form I-690 application in 1990. Nonetheless, the regulation at 8 C.F.R. 245a.1(m) defines “family unity” as “maintaining the family group without deviation.” The “family group” is limited to the spouse, unmarried minor children under 18 years of age . . . and parents” Given this restrictive definition, the applicant has not shown that a waiver would assure “family unity.” However, the applicant’s family does factor into an analysis of whether a waiver is warranted on humanitarian grounds.

Counsel contends that the applicant is eligible for a waiver based on humanitarian grounds. Counsel recites the facts listed above regarding the applicant’s close family ties in the United States. The applicant and her children provide one another mutual emotional and financial support. The applicant submitted evidence that she has been diagnosed with hypertension, diabetes and hyperlipidemia. She has medical insurance in the United States, allowing her to obtain quality health care here. She has resided in the United States since the age of 27 for a span of 32 years. The applicant has developed ties to the United States. She is an active member of her community and church. The applicant has established that she is eligible for a waiver based on humanitarian grounds.

Counsel asserts that the applicant is eligible for a waiver as its grant would serve the public interest. In the precedent decision *Matter of P-*, the court noted that the term “in the public interest” is not defined in the Act or the regulations. The court further noted that Congress contemplated that waivers under section 245A of the Act be granted liberally. “In most cases, denials of legalization on the basis of the waivable exclusions should only occur when the applicant also falls within one of the specified nonwaiverable grounds of exclusion.” H.R.Rep. No. 98-115, 98th Cong., 1st Sess. 69-70. Finally, the court adopted the definition at page 1106 of the fifth edition of *Black’s Law Dictionary* to determine that “public interest” was “something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.” *Matter of P-*, 19 I&N Dec. 823, at 828 (Comm. 1988). In support of his assertion that the applicant warrants a waiver as it would serve the public interest, counsel submitted evidence of the applicant’s volunteer work within the community. The pastor of the [REDACTED] Fellowship wrote that the applicant leads a Bible study group and is in charge of the organization’s visitation department, which ministers

² The term “family unity” means maintaining the family group without deviation or change. 8 C.F.R. § 245a.1(m). The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group. *Id.*

to those who are ill or otherwise ailing. Counsel submitted evidence that the applicant is serving as chief financial officer for a nonprofit religious organization. Finally, he submitted evidence that the applicant has been gainfully employed since 1979, paying taxes. The applicant has shown that a waiver would serve the "public interest" to the extent she will continue to serve the community as a volunteer, and to contribute to the economy by working and paying taxes.

Based upon the foregoing, the AAO finds that the applicant has met her burden of proof to establish her eligibility for a waiver of inadmissibility under section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i). Accordingly, the AAO withdraws the director's decision to deny the waiver application and the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.