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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

[Redacted]

DATE: JUL 29 2013 OFFICE: NEBRASKA SERVICE CENTER

IN RE: [Redacted]

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

FILE: [Redacted]

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director (director) denied the Application for Waiver of Grounds of Inadmissibility (Form I-690) and certified the decision to the Administrative Appeals Office (AAO) for review. In a decision dated March 31, 2005, the AAO affirmed the director's denial. The AAO now reopens the matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(i) for purposes of entering a new decision. The director's decision to deny the Form I-690 application and the AAO's prior decision dismissing the appeal will be withdrawn and the waiver application will be approved.

On July 14, 2003, the applicant filed a motion to reopen the denial of his Application for Status as a Temporary Resident (Form I-687) pursuant to *Proyecto San Pablo v. INS*, No. 89-00456-WBD (D. Ariz). The motion to reopen was approved. On November 21, 2003, the applicant filed a Form I-690, Application for Waiver of Grounds of Inadmissibility, pursuant to section 245A of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1225a.

In a decision dated December 2, 2004, the director denied the Form I-690 waiver application, finding that the applicant's December 23, 1986 departure pursuant to a deportation order meant he failed to maintain the required continuous residence. See Section 245A(g)(2)(b)(i) of the Act, 8 U.S.C. § 1255a(g)(2)(b)(i).¹ On March 31, 2005, the AAO affirmed the director's decision noting that no purpose would be served in granting the waiver as the applicant was otherwise ineligible for legalization due to his December 23, 1986 deportation.

Pursuant to the terms of the 2007 amended *Proyecto* order, the AAO reopens this matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(i) for purposes of adjudicating on the merits the previously filed Form I-690 waiver application. The record shows that the applicant is inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), which relates to aliens who were deported and reentered the United States without inspection. Pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), such inadmissibility may be waived "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 regulation defines the term "family unity" as "maintaining the family group without deviation or change." 8 C.F.R. § 245a.1(m). The same regulation provides that the phrase "family group" includes the spouse and unmarried minor children under 18 years of age who are not members of another household. *Id.* In *Matter of P-*, the Commissioner defined the term "in the public interest" to mean "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." 19 I&N Dec. 823, 828 (Comm. 1988). Moreover, the Commissioner noted that "Congress contemplated that waivers under section 245A of the Act be granted liberally." *Id.*; see also *Matter of N-*, 19 I&N Dec. 760, 760

¹ The section provides that "an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation."

(Comm. 1988) (noting that Congress intended the legalization program to be administered in a liberal and generous fashion).

The evidence submitted by the applicant in support of his waiver application establishes he is married, is the father of two United States citizen children, one of whom is under 18 years of age, has been employed continuously in the United States since his entry without inspection in 1979, and has no misdemeanor or felony criminal convictions.

In a declaration submitted in support of his waiver application, the applicant states that he has made every effort to assimilate and has been a respectful and responsible person. He asserts that he is the sole breadwinner of the family and that his income supports his family and assists the household of his sister. The applicant further asserts that the family relies on his financial and emotional support, and that they form a close and loving group who depend upon one another for moral, spiritual and economic help. The documentary evidence submitted in support of the waiver application reflects that the applicant has resided in the United States for the past 33 years with no criminal record, has paid income taxes, and has contributed to his family and community.

Upon thorough review of all positive and negative factors presented in the waiver application, the AAO is persuaded that the applicant is eligible for the waiver of the section 212(a)(9) inadmissibility on humanitarian grounds and to assure family unity.

ORDER: The director's decision denying the applicant's Form I-690 application is withdrawn. The AAO's prior decision dismissing the appeal is withdrawn. The waiver application is reopened and approved.

cc:

