



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **SEP 18 2013** Office: NEBRASKA SERVICE CENTER [REDACTED]

IN RE: Applicant: [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

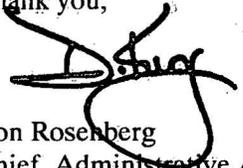
ON BEHALF OF APPLICANT:

[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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, (director) denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on certification. The AAO will withdraw the director's decision and approve the application.

The applicant is a native and citizen of Mexico. On April 28, 1988, the applicant filed an Application for Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1225a. On December 5, 1988, the application was denied by the Director, California Service Center, finding the applicant's February 23, 1982 departure pursuant to a deportation order meant the applicant 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 August 16, 1989, an appeal of that decision was dismissed by the Legalization Appeals Unit (LAU), now the AAO.

On January 29, 2003, the Immigration and Naturalization Service (INS), now U.S. Citizenship and Immigration Services (USCIS), published a notice in the Federal Register to comply with the judgment entered on March 27, 2001 in the case of *Proyecto San Pablo v. INS*, No. Civ 89-456-TUC-WDB (D. Ariz.) The Service later mailed the notice to all aliens that it was aware of who could possibly benefit from the judgment. The notice stated, "The Service will not act to reopen your case unless you notify the Service that you want the Service to do so. If you want to exercise your rights under the *Proyecto* decision, you must file with the Service a motion to reopen, without fee."

The notice also stated, "You must file your motion no later than 1 year from the date you are personally served this notice by the Service, as described below." The notice further explained that if an alien is known to meet the *Proyecto* class definition, the notice will be mailed by certified mail, return receipt requested, to the alien's last known address contained in his or her file. In this case, the INS mailed the notice on May 16, 2003 to the applicant's last known address at the time. The postal receipt, signifying receipt of the notice, was signed by [REDACTED] the applicant's daughter, on May 20, 2003.

On April 19, 2012, counsel submitted a Form I-290B, motion to reopen and a brief pursuant to the amended *Proyecto* order dated June 4, 2007.² Counsel also filed a Form I-690, application for a waiver.

On March 21, 2013, the director denied counsel's motion to reopen, finding the applicant was no longer a *Proyecto* class member because he did not file a Form I-290B, motion to reopen, within the one-year period that ended on May 20, 2004. In addition, the director denied Form I-690 on the basis that the applicant was no longer a "qualifying class member." On May 10, 2013, the

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."

² Defendants in the law suit are the Department of Homeland Security, et al.

AAO issued a notice to the applicant and counsel that the matter has been certified to the AAO for review.

Pursuant to the terms of the 2007 amended *Proyecto* order, the AAO now 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 (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 to a U.S. citizen, has been employed continuously in the United States since his entry without inspection in 1980, and has no misdemeanor or felony criminal convictions. The evidence also establishes that the applicant is the father of two United States citizen daughters and one daughter who is a native and citizen of Mexico, all of whom are over 18 years of age. The applicant states his daughters reside with him.

In a declaration submitted in support of his waiver application, the applicant asserts that he is the sole breadwinner of the family, having worked in the trades of metalwork finishing and construction since his arrival to the United States in 1980. He also assists his father, who is recovering from open heart surgery, in his activities of daily living and in transporting him to medical appointments. The applicant further asserts that the family relies on his financial and emotional support. 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.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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 will be withdrawn and the waiver application will be approved.

ORDER: The matter is reopened. The director's March 21, 2013 decision denying the Form I-690 waiver application is withdrawn. The waiver application is approved.