



U.S. Department of Justice

Immigration and Naturalization Service

A

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



APR 20 2000

FILE: [Redacted] Office: Texas Service Center

Date:

APR 20 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Adjustment of Status to Permanent Residence Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255

IN BEHALF OF APPLICANT:



preventing...
prevent clearly warranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Honolulu, Hawaii, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Korea who is seeking to adjust her status to that of a lawful permanent resident pursuant to section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1255. The applicant is the beneficiary of an immediate relative visa petition filed by her United States citizen husband.

The district director determined that the adverse factors in the applicant's case outweigh the favorable exercise of discretion on her application for adjustment of status. The district director, therefore, denied the application as a matter of discretion.

Section 245 of the Act states in part:

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

A review of the record reflects that the applicant claimed to have been issued a "commercial" visa in Korea to come to the United States, but that she had since lost her passport. The applicant later admitted that she was denied a nonimmigrant visa for the United States in [REDACTED] and [REDACTED] and finally obtained a nonimmigrant visa in [REDACTED]. She entered the United States from London as a B-2 visitor for pleasure on August 13, 1985 at Los Angeles, California.

The district director noted that four sworn statements were taken from the applicant regarding her application for permanent residence, that she has not been honest, and that her false testimony is on record. He listed additional facts in the applicant's case and regarded as adverse factors:

1. The applicant obtained employment illegally at a bar in California as a bartender; however, she stated under oath that she lived with a friend and was a baby sitter for her children, she

gave them piano lessons, but did not receive payment for her services.

2. The applicant impersonated a female and obtained a Seattle driver's license using this female's name. She also applied for a liquor license in Seattle using this false driver's license as identification.

3. The applicant owes approximately \$10,000 on two credit cards that she has not repaid, she stated that she couldn't make the payments, and that she has bad credit because of this.

4. An investigation conducted by the American Embassy in Seoul revealed that the applicant and her ex-husband were charged with fraud by the Pusan Public Prosecutor's Office on December 12, 1985, but that there was a suspension of the indictment because the period of prescription (7 years) had expired. Because it has been more than 13 years, the Criminal Record Division, [REDACTED] was unable to obtain the arrest report. When the applicant, however, was questioned under oath regarding the fraud charge, she claimed she has no knowledge of the charge.

It was held in Matter of Arai, 13 I&N Dec. 494 (BIA 1970), that where adverse factors are present in a given application for adjustment of status under section 245 of the Act, it may be necessary for the applicant to offset these by a showing of unusual or even outstanding equities. Generally, favorable factors such as family ties, hardship, length of residence in the United States, etc., will be considered as countervailing factors meriting a favorable exercise of administrative discretion. In the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion. (Emphasis added).

As noted by the district director, the only favorable factor in this case is the petitioner's marriage to a United States citizen. There is no evidence in the record that her departure from the United States would result in any unusual hardship to her U.S. citizen spouse, nor has she shown that she and her spouse would suffer hardship as a result of her absence from the United States to attend an immigrant visa interview at an American Consulate abroad, or the hardship experienced if the spouse were to join the applicant abroad.

An applicant for adjustment of status under section 245 of the Act who meets the objective prerequisites is merely eligible to apply for adjustment of status. She is in no way entitled to adjustment. See Matter of Tanahan, 18 I&N Dec. 339 (Reg. Comm. 1981). When an alien seeks the favorable exercise of discretion of the Attorney

General, it is incumbent upon her to establish that she merits adjustment. It is, therefore, concluded that the applicant has failed to establish that she warrants a favorable exercise of the Attorney General's discretion.

Accordingly, the district director's decision to deny the application as a matter of discretion will be affirmed.

ORDER: The district director's decision is affirmed.