



U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

FILE: [Redacted]

Office: Honolulu

Date: FEB 24 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: Self-represented

Identifying information is redacted to prevent clearly unwarranted 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 [REDACTED] who is seeking to adjust his status to that of a lawful permanent resident under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1255.

The district director determined that the applicant has not established that he is a person of good moral character based on his arrests and convictions. The district director, therefore, denied the application as a matter of discretion.

The applicant has provided no statement or additional evidence on notice of certification.

Section 245 of the Act states in part:

(a) 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 ...

(c) Subsection (a) shall not be applicable to (1) an alien crewman; (2) an alien...who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States ...

(i)(1) ... an alien physically present in the United States who (A) entered the United States without inspection, or (B) is within one of the classes enumerated in subsection (c) of this section, may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling five times the fee required for the processing of applications under this section as of the date of receipt of the application ...

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and an immigrant visa is immediately available to the alien at the time the application is filed.

The application for adjustment of status under section 245(i) of the Act reflects that the applicant entered the United States without inspection on March 25, 1997. The applicant is the beneficiary of an I-130 Petition for Alien Relative filed on his behalf by his United States citizen spouse on September 17, 1997.

The record reflects that the applicant was arrested and/or convicted of the following in Hawaii:

1. On January 23, 1996, the applicant was arrested and charged with abuse of family. On February 20, 1996, he was found guilty of the charge and sentenced to 48 hours of confinement and placed on probation for a period of one year.

2. On December 9, 1995, the applicant was arrested and charged with (1) reckless driving and (2) general operation of vehicle. On February 28, 1996, he was found guilty of the charges and fined \$100.

3. On July 4, 1993, the applicant was arrested and charged with violation of protective order. On July 20, 1993, he was found guilty of the charge and sentenced to 14 days of confinement and placed on probation for a period of one year.

4. On September 20, 1991, the applicant was arrested and charged with liquor violation at a county parking lot. On October 14, 1991, he was found guilty of the charge and fined \$50.

Spousal abuse is a crime involving moral turpitude. Grageda v. INS, 12 F.3d 919 (9th Cir. 1993); In re Phong Nguyen Tran, Int. Dec. 3271 (BIA 1996) (an infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards). The arrest report shows that the applicant "physically abused" his spouse and that she sustained injuries to the neck and mouth.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. 1182(a)(2)(A)(i)(I), based on his conviction of a crime involving moral turpitude. Further, based on the applicant's arrests and convictions listed above, the district director stated that the applicant appears to have no regard for laws and regulations that are in effect in the United States. He also stated that the applicant attempted to circumvent the immigration laws when he

entered the United States without inspection. Citing Matter of Francois, 10 I&N Dec. 168 (BIA 1963), and Matter of Marques, 16 I&N Dec. 314 (BIA 1977), which held that good moral character is a factor which must be considered in determining whether discretion should be exercised in a particular case, the district director denied the application as a matter of discretion.

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).

The only factors noted in this case are that the applicant's wife and daughter are United States citizens. There is no indication nor is there evidence furnished to establish the existence of extreme hardship caused by separation if the applicant is not allowed to remain in the United States. Further, the applicant was offered an opportunity to submit evidence in opposition to the district director's findings. No additional evidence has been entered into the record of proceeding. Nor is there evidence that the applicant is the recipient of an approved waiver of grounds of inadmissibility.

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. He is in no way entitled to adjustment. See Matter of Tanah, 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 him to establish that he merits adjustment.

It is, therefore, concluded that the applicant has failed to establish that he 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.