

**U.S. Department of Justice****Immigration and Naturalization Service**

*OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536*

ANTONIO FRANCIS-LUGO
C/O LOS ANGELES COUNTY DEPT. OF CHILDREN AND FAMILY SERVICES
5835 SOUTH EASTERN AVENUE
LOS ANGELES, CA 90040

File: A 77 762 764 Office: LOS ANGELES

Date:

11/14/02

IN RE: Petitioner: CECILIA SACO, SUPERVISOR SIS UNIT, DEPT. OF CHILDREN AND FAMILY SERVICES
Beneficiary: ANTONIO FRANCIS-LUGO

Application: Application for Adjustment of Status to that of Permanent Resident Alien Pursuant to section 245(h) of the Immigration and Nationality Act, 8 U.S.C. 1255

IN BEHALF OF PETITIONER:

HAROLD BOO
LATHAM & WATKINS
633 W. FIFTH STREET, SUITE 4000
LOS ANGELES, CA 90071

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Los Angeles district director approved the applicant's special immigrant visa petition and denied his application for adjustment of status. The director certified the decision to the Administrative Appeals Office. The director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The applicant is a 17-year old native and citizen of Mexico. He seeks adjustment of status as a special immigrant juvenile. With the consent of the Service, the proper juvenile court has made the determinations necessary to qualify the applicant for this classification.

The district director denied the applicant's application for permanent residence because the alien was removed from the United States as an inadmissible applicant for admission on three separate occasions: twice in September 1999 and once in October 1999. The alien entered the country illegally at the age of 14 and was expeditiously removed three times.

In response to the notice of certification, counsel for the applicant submits a brief opposing denial of the application.

The issue for decision is whether section 241(a)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1231(a)(5), makes the alien ineligible for adjustment of status. Section 241(a)(5) of the Act states:

Reinstatement of removal orders against aliens illegally reentering.--If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

By its terms, nothing in section 241(a)(5) indicates that it does not apply to minors, thus section 241(a)(5) would permit reinstating a removal order against a minor who reentered the United States after removal. If the applicant were seeking adjustment of status on the basis of a family-based or employment-based immigrant visa petition, he would clearly be ineligible for adjustment of status.

However, section 245(h)(1) of the Act, 8 U.S.C. 1255(h)(1), accords special immigrant juveniles a special status. Section 245(h)(1) of the Act establishes that an alien seeking adjustment as a special immigrant juvenile "shall be deemed, for purposes of subsection (a), to have been paroled into the United States."

Rather than consider the applicant as one who reentered the United States illegally, the Service must deem the applicant to have been paroled into the country solely for the purpose of seeking adjustment of status. It is a long-standing rule that a paroled alien is deemed not to have entered the United States. Leng May Ma v. Barber, 357 U.S. 185 (1958). The applicant avoids triggering the reinstatement provisions of the Act by virtue of his parole status.

Although the applicant avoids being subject to reinstatement, he is still subject to section 212 of the Act relating to general classes of aliens ineligible to receive visas and ineligible for admission. The applicant may be ineligible for admission because he was previously removed and made misrepresentations regarding his citizenship in order to gain admission into the United States. Section 245(h) of the Act provides in pertinent part:

In applying this section to a special immigrant described in section 101(a)(27)(J) - * * * (2) in determining the alien's admissibility as an immigrant - . . . (B) the Attorney General may waive other paragraphs of section 212(a) . . . in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

Accordingly, the decision of the district director will be withdrawn. This case shall be remanded back to the district director so that he can request and adjudicate an application for a waiver of the relevant grounds of inadmissibility. After receipt and consideration of the waiver application, the district director should enter a new decision.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for entry of a new decision, which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.