

MATTER OF C—N—J—

In SECTION 245 Proceedings

A-6826124

Decided by District Director December 15, 1960

Approved by Assistant Commissioner

Adjustment of status—Section 245—Effect of admission as immigrant.

The benefits of section 245 of the Immigration and Nationality Act, for which only nonimmigrants were eligible prior to the amendment of July 14, 1960, are extended to otherwise eligible aliens who were inspected and admitted as immigrants and who did not participate in fraud or deceit in gaining admission.

BEFORE THE DISTRICT DIRECTOR

DISCUSSION: The applicant, a 31-year-old married female, native and citizen of China, last entered the United States at San Francisco, California, on December 17, 1947. She was admitted as a nonquota immigrant under section 1, Act of December 28, 1945, upon the basis of her marriage to a United States citizen, C—C—J—, who was a member of the armed services. Since entry, she has given birth to four children, all of whom were born in Providence, Louisiana.

Her spouse, C—C—J—, voluntarily confessed to the Immigration and Naturalization Service on February 11, 1959, that he was not a citizen of the United States as he had previously claimed, and that he entered the United States on a false claim to citizenship. This confession revealed his wife's illegal immigration status. The applicant has testified that at the time of her entry into the United States she did not know that her husband was not a United States citizen.

Applicant's spouse acquired United States citizenship by naturalization at Shreveport, Louisiana, on December 11, 1959. He submitted a petition to accord the applicant nonquota status under section 101(a)(27)(A) of the Immigration and Nationality Act, which petition was approved on October 31, 1960. The applicant has submitted an application on Form I-485 for adjustment of her status to that of a permanent resident pursuant to section 245 of the Immigration and Nationality Act.

Prior to amendment by the Act of July 14, 1960, section 245 by its terms was available only to nonimmigrants. Since that date, any alien "other than an alien crewman, who was inspected and admitted or paroled into the United States" is eligible to apply for the benefits of section 245.

The record discloses that the applicant was "inspected and admitted" as an immigrant and did not participate in any fraud or deceit in gaining admission as such. Since she has been accorded nonquota status, an immigrant visa is immediately available to her. She has resided in the United States for a period of thirteen years, is married to a United States citizen and has four minor United States citizen children. She has established that she is a person of good moral character. The requirements of the statute have been met. It is concluded that the facts and circumstances in this case merit favorable exercise of the Attorney General's discretionary authority.

ORDER: It is ordered that the application for status as a permanent resident under section 245 of the Immigration and Nationality Act be and the same is hereby granted.