



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



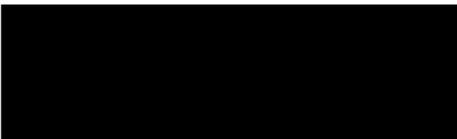
File: [REDACTED] Office: ANCHORAGE, ALASKA

Date: FEB 2 2001

IN RE: Applicant: [REDACTED]

Application: Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT:



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identification data deleted to
prevent disclosure unawarranted
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

Mary C. Mulrean, Acting Director
Administrative Appeals Office



DISCUSSION: The application was denied by the District Director, Anchorage, Alaska, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured a benefit by fraud or willful misrepresentation. In 1995, the applicant married a lawful permanent resident who subsequently naturalized as a United States citizen in 1998. He is the beneficiary of an approved petition for alien relative and seeks the above waiver in order to remain in the United States and reside with his spouse and children.

The district director concluded that the applicant had failed to establish sufficient cause to grant the waiver and denied the application.

On appeal, counsel states that the district director erred in requiring the applicant to file an application for waiver of inadmissibility under § 212(a)(6)(C)(i) and that the applicant is not inadmissible for having used false documents to obtain employment. Counsel also asserts that district director did not allow the applicant to present evidence in support of his application, relied on erroneous factual assertions which were unsupported in the record, failed to consider the substantial favorable equities present in the case, and failed to give individualized consideration to the effect that the applicant's removal would have on his United States citizen wife and children.

The record reflects that the applicant was found on May 28, 1998 to have presented fraudulent documents in order to satisfy employment verification requirements. The applicant is therefore inadmissible under § 212(A)(6)(c)(1) for having procured a benefit under the Act by fraud or willful misrepresentation.

The record also reflects that the applicant was deported from the United States on May 22, 1997. He subsequently reentered the United States without inspection in June 1997. Therefore, he is also inadmissible to the United States under § 212(A)(9)(A)(3) of the Act.

Service instructions at O.I. 212.7 specify that when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility, the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) will be adjudicated first. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.



The present record contains evidence that the applicant's application for permission to reapply was adjudicated simultaneously with his application for waiver of inadmissibility. Both applications were denied by the district director and appealed to the Associate Commissioner. The appeal of the application for permission to reapply will be dismissed under separate cover. Since there is no evidence that the Form I-212 application has been approved in this instance, the appeal of the district director's decision denying the Form I-601 application will be rejected and the decision of the district director will be withdrawn as moot.

There is no evidence that the Form I-601 application was initially properly filed, as there is no evidence that the required fee was paid. However, the record does contain evidence that the fee for filing the appeal of the denial of the application was paid. Therefore, the matter will also be remanded to the district director to refund the fee for filing the appeal in this matter.

ORDER: The appeal is rejected. The district director's decision is withdrawn as moot and the matter is remanded to him for a refund of the fee for filing this appeal.