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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

FILE: [Redacted] Office: SAN FRANCISCO, CA

Date: MAY 15 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:

[Redacted]

Public Copy

identification data deleted 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The application will be declared unnecessary, and all action on it will be terminated.

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 filed a fraudulent application for amnesty under § 245A of the Act in 1991. The applicant married a citizen of the United States in 1997 and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel argues that the district director failed to review all of the relevant factors cumulatively and failed to weigh the equities presented to establish that the applicant's spouse would suffer extreme hardship if the applicant were removed from the United States.

The record reflects that the applicant filed a fraudulent application for amnesty (also referred to as "legalization") under § 245A of the Act on or about February 1991 in order to obtain employment authorization. Documentation or evidence concerning the applicant's amnesty application is not present in the record of proceeding. However, the record contains an affidavit from the applicant admitting to the fraudulent filing and the district director makes reference to such an occurrence in his decision.

Regarding applications for adjustment of status of amnesty applicant's, section 245A(c) of the Act, 8 U.S.C. 1255a(c), states:

(5) CONFIDENTIALITY OF INFORMATION.-

(A) IN GENERAL.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under § 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Since the Service is statutorily precluded from using the information regarding fraud perpetrated in proceedings under § 245A of the Act, except for that specific application, the district director's decision will be withdrawn, as no other fraud has been established. The application will be declared unnecessary and moot, and all action on it will be terminated.

ORDER: The appeal is sustained. The application is declared unnecessary, and all action on it is terminated.