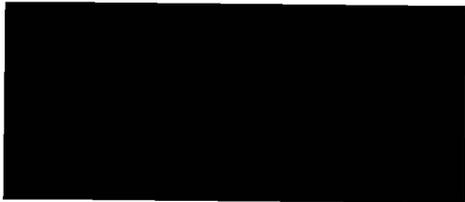




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



H1

FILE:



Office: NEWARK

Date:

JAN 04 2004

IN RE:

Applicant:



APPLICATION: Form I-601, Application for Waiver of Grounds of Inadmissibility.

ON BEHALF OF APPLICANT:



Administrative Appeals Office

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Turkey who was found to be inadmissible to the United States under section 212(a)(6)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(G), for violating a term or condition of his F-1 student status under section 214(l) of the Act. The applicant filed a Form I-601 application for a waiver of this ground of inadmissibility as instructed by a Citizenship and Immigration Services (CIS) officer in connection with his Form I-485, Application to Register Permanent Resident or Adjust Status.

The district director concluded that the Act contains no provision for a waiver of inadmissibility under section 212(a)(6)(G) of the Act, thus the applicant is statutorily ineligible for a waiver. *Decision of the District Director*, dated July 20, 2005. The district director further noted that the applicant is in violation of section 237(a)(3)(A) of the Act for failing to file a Form AR-11 to report his change of address. The application was denied accordingly.

On appeal, counsel for the applicant contends that the applicant is not inadmissible under section 212(a)(6)(G) of the Act, thus he does not require a waiver. *Statement from Counsel on Form I-290B*, dated August 11, 2005. In the alternative, counsel asserts that the applicant's wife will experience extreme hardship if the applicant is not provided a waiver of inadmissibility. *Id.*¹

The record contains a statement from counsel on Form I-290B; documentation of the applicant's school attendance in the United States, including copies of his Forms I-20; documentation relating to the applicant's purchase of a home in the United States; a letter from the applicant's physician; a statement from the applicant; copies of the applicant's passport, F-1 visa, and Form I-94 departure record; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; a copy of the applicant's wife's naturalization certificate; documentation of the applicant's employment, and; tax records for the applicant and his wife. The entire record was considered in rendering this decision.

Section 212(a)(6)(G) of the Act states the following:

Student visa abusers. – An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is excludable until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

As correctly observed by counsel, present section 214(l) of the Act does not address conditions of F-1 status pursuant to section 101(a)(15)(F)(i). Subsequent to the enactment of present section 212(a)(6)(G), the section of law referred to as section 214(l) of the Act was moved to section 214(m) of the Act. Thus, section 212(a)(6)(G) of the Act renders an applicant inadmissible for violations under section 214(m) of the Act.

¹ The AAO notes that as there is no waiver of inadmissibility under section 212(a)(6)(G), the director erred in requesting a Form I-601 to cure the inadmissibility. However, as the matter is before the AAO on appeal, also suggested by the director, a full examination of the issues will be conducted.

Section 214(m) of the Act provides the following:

(1) An alien may not be accorded status as a nonimmigrant under clause (i) or (iii) of section 1101(a)(15)(F) of this title in order to pursue a course of study –

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless -

(i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and

(ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.

(2) An alien who obtains the status of a nonimmigrant under clause (i) or (iii) of section 1101(a)(15)(F) of this title in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 1101(a)(15)(F) of this title shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

The record reflects that the applicant entered the United States on February 22, 2001 pursuant to an F-1 student visa to attend the California State Polytechnic University. He subsequently transferred to the Uceda School ("Uceda") on or about July 30, 2001. He then transferred to Zoni Language Centers ("Zoni") on or about May 27, 2002. The applicant submitted Forms I-20 to support that he maintained his F-1 status by making these transfers using proper procedures. On November 20, 2002, the applicant began the process of transferring back to Uceda. He registered with Uceda, then presented transfer documentation to Zoni on November 26, 2002. The applicant ultimately withdrew from enrollment with Zoni, yet he did not complete the process of transferring to Uceda. The record reflects that the applicant's transfer process was impeded in part due to an injury he sustained that restricted his capacity, and the failure of Uceda to complete necessary paperwork in a timely manner.

The applicant determined that he wished to reenroll with Zoni, yet Zoni informed him that he would need to reinstate his F-1 status. On or about March 11, 2003, the applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status, in order to reinstate his F-1 student status. The district director denied the application on June 28, 2003, finding that the applicant violated the terms of his F-1 status by failing to transfer properly to an authorized institution in a timely manner. *Decision of the District Director*, dated July 1, 2003. The district director noted that the applicant failed to show that circumstances beyond his control resulted in his violation of his status and that failure to be reinstated would cause him extreme hardship. *Id.*

The applicant married a U.S. citizen on October 22, 2003. On June 22, 2004, he filed a Form I-485, Application to Register Permanent Resident or Adjust Status, based on an approved Form I-130 Petition for Alien Relative filed on his behalf by his wife. As instructed by a CIS officer, he filed the present Form I-601 application for a waiver due to the fact that he was found inadmissible.

Upon review, the applicant is not inadmissible pursuant to section 212(a)(6)(G) of the Act. As quoted above, section 212(a)(6)(G) of the Act renders an individual inadmissible when he violates a narrow set of conditions of F-1 status. Specifically, section 212(a)(6)(G) of the Act, through section 214(m) of the Act, prohibits an individual who entered the United States in F-1 status to study at a privately-funded school from then transferring to a publicly funded school. Section 214(m)(2) of the Act. In essence, section 212(a)(6)(G) of the Act prevents foreign nationals from entering the United States under the claim that their course of study will be funded by them or private sources, and then transferring into programs that involve funding from U.S. federal, state, or local government sources. *See Id.*

In the present matter, the record does not show that the applicant has studied or attempted to study in a program that involves funding from public sources. Each of the Forms I-20 submitted by the applicant reflect that the sources of funding for his studies were "Family Funds," the applicant's personal funds, or a sponsor.

Based on the foregoing, the applicant did not violate the conditions of section 214(m) of the Act, and thus he is not inadmissible under section 212(a)(6)(G) of the Act.

The district director noted that the applicant is in violation of section 237(a)(3)(A) of the Act for failing to file a Form AR-11 to report his change of address. The record contains no evidence to reflect that the applicant did file a Form AR-11 when he changed his residence from Towaco, New Jersey to Rockaway, New Jersey.

Section 237(a)(3)(A) of the Act provides the following:

Change of Address. – An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General [now Secretary of the Department of Homeland Security] that such failure was reasonably excusable or was not willful.

While a violation of section 237(a)(3)(A) of the Act may render an individual deportable, it does not render him inadmissible, such that he may require a waiver through the filing of a Form I-601 application.

After a careful examination of the record, the AAO finds no grounds of inadmissibility to which the applicant is subject. Accordingly, the applicant does not require a waiver of inadmissibility and his Form I-601 application will be declared moot.

ORDER: The decision of the district director is withdrawn, the Form I-601 application is declared moot, and the appeal is sustained.