



U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY



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

NOV 14 2001

FILE: [Redacted]

Office: San Francisco

Date:

IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT:



Identify date deleted to
prevent disclosure of
information of potential privacy

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 waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The acting district director's decision will be withdrawn, and the application will be declared moot.

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States by a consular officer under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to procure a benefit by fraud or willful misrepresentation. The applicant married a United States citizen in April 1994, and he is the beneficiary of an approved petition for alien relative. The applicant seeks the above waiver in order to remain in the United States and reside with his spouse.

The acting 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 states that the applicant provided the interviewing Service officer with information in April 1996 which he did not know was confidential under section 245A(c)(5) of the Act, 8 U.S.C. 1255c(c)(5). Counsel states that the applicant indicated on his application for legalization that he came to the United States in 1981 when, in reality, he did not enter until 1987. Counsel then discusses the various aspects of hardship which would be imposed on the applicant's wife if he were not allowed to remain in the United States.

Section 245A(c)(5) of the Act provides that:

(A) 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 section 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.

According to counsel, the applicant committed a fraudulent act in applying for amnesty. That documentation or evidence is not present in the record of proceeding. However, the district director makes reference to such an occurrence in his decision.

Since the Service is statutorily precluded from using the information regarding fraud perpetrated in proceedings under section 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 moot, and all action on it is terminated.