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U.S. Citizenship  
and Immigration  
Services

*HA*

JUN 01 2004

FILE:

Office: BALTIMORE, MD

Date:

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the District Director for further action consistent with this decision.

The record reflects that the applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States (U.S.) 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 procured a benefit under the Act by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and he seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded the applicant had failed to establish that his U.S. citizen wife would suffer extreme hardship if he were removed from the United States. The application was denied accordingly.

On appeal, the applicant asserts that his wife would suffer emotional, financial, and psychological hardship in the United States, or in the alternative in Nigeria, if he were removed from the United States. The applicant additionally asserts that he did not commit fraud or misrepresent a material fact to the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) when he obtained his marriage-based lawful permanent resident status, and that he was unaware that his original Nigerian divorce decree was fraudulent.

The record reflects that the applicant was admitted into the U.S. as a non-immigrant visitor on or about December 20, 1986. The applicant married a U.S. citizen, [REDACTED] on November 26, 1997. The applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485 application) on September 13, 1989, and his immigration status was adjusted to that of a conditional lawful permanent resident on October 31, 1990. The condition was subsequently removed and the applicant became a lawful permanent resident on September 8, 1992. Pursuant to a December 1992, investigation in Nigeria, the Service determined that the applicant's marriage to [REDACTED] was void because the Nigerian divorce decree submitted to establish the applicant's prior marriage to [REDACTED] was determined to be fraudulent. The Service subsequently issued a Notice of Intent to Rescind the applicant's lawful permanent resident status in December 1992, and on June 23, 1993, the applicant's case was forwarded to the immigration court for rescission proceedings.

The AAO notes that the present record contains no evidence to indicate that immigration court rescission proceedings were actually commenced or carried out against the applicant in 1993. Moreover, the AAO notes that an independent review of Executive Office of Immigration Review (EOIR) and centralized Service database records reflect no evidence that the applicant was placed into immigration court rescission proceedings or that his lawful permanent resident status was rescinded or otherwise terminated.

The record reflects that in order to overcome the Service finding that his Nigerian divorce decree was fraudulent and that his marriage to a U.S. citizen was void, the applicant obtained a new divorce from his first wife [REDACTED] on November 26, 1997, pursuant to a valid U.S. court proceeding. The applicant then remarried his wife, [REDACTED] in a valid U.S. proceeding on January 14, 1998. The record reflects that the applicant filed a second Form, I-485, application to adjust his status to that of a lawful permanent resident, in March 1998.

On May 10, 1999, the applicant was notified of the Service's intent to deny his second I-485 application based on a finding that he was inadmissible under section 212(a)(6)(c)(i) of the Act, for willful misrepresentation of a material fact relating to his first marriage and divorce. The applicant filed a Form I-601, Application for Waiver of Grounds of Excludability (I-601 application) in July 1999. The record reflects that the district director denied the applicant's I-601 application on October 14, 1999, on the ground that he had failed to establish that his wife would suffer extreme hardship if he were removed from the United States. The applicant appealed the decision to the AAO on November 1, 1999.<sup>1</sup>

The AAO finds that the information contained in the present record, as well as the information contained in EOIR and centralized Immigration Service computer databases, fails to demonstrate that the lawful permanent resident status granted to the applicant in 1992, was ever rescinded or otherwise terminated by the Service. The AAO notes that if the applicant's original lawful permanent resident status was not terminated or rescinded, then his second, March 1998, I-485, Application for Adjustment of Status to that of a Lawful Permanent Resident would be moot. Moreover, it would follow that the district director's finding of inadmissibility and the denial of the applicant's March 1998, I-485 application, as well as the denial of the applicant's subsequent I-601 Waiver of Inadmissibility application would also be moot.

The AAO notes that the record of proceedings submitted to the AAO for review is not the applicant's complete alien file. The AAO notes further that its requests to obtain a complete alien file in this matter have been unanswered. The AAO therefore finds it necessary to remand the present matter to the district director, Baltimore, Maryland, for determination of whether the applicant's lawful permanent resident status was either rescinded or otherwise terminated. After such determination, the complete record of proceeding is to be returned to the AAO in order to render a decision on the present appeal.

**ORDER:** The matter is remanded to the District Director for further action consistent with this decision.

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<sup>1</sup> The AAO notes that the applicant's Notice of Appeal was filed on November 1, 1999, but that the appeal was forwarded to the AAO in May 2003, subsequent to the denial of his Application for Naturalization under section 316(a) of the Act, 8 U.S.C. § 1427(a). The AAO notes further that, although the applicant is now represented by an attorney, he was self-represented when he filed the present appeal in 1999