



U.S. Citizenship  
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FILE:



Office: SAN FRANCISCO (FRESNO), CA

Date: **DEC 21 2005**

IN RE:



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, San Francisco (Fresno), California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as there is no evidence that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native of Laos and a citizen of France who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having procured admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. Citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse who petitioned for him in this case.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 5, 2002.

On appeal, the applicant asserts that he has not misrepresented any facts in order to gain an immigration benefit and his family would suffer extreme hardship as the result of his removal. *Form I-290B*, dated April 25, 2002.

In support of these assertions, the applicant submits statements from himself, his spouse, friends and family members. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States on September 23, 1989 through the Visa Waiver Pilot Program. The director found that upon completing his visa form, the applicant failed to indicate the purpose of his visit was to work for his brother and that his intent was to remain in the United States with his family and not to return to France. As a result of this alleged misrepresentation, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C)(i) of the Act. Stated in part; (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer, (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case. Consular of Bureau officers “shall” warn the alien being interviewed of the statutory penalty.

The AAO notes that the record includes a signed statement from the applicant, dated November 28, 2001, wherein he states that his purpose in coming to the United States was to work for his brother and he had no intention of returning to France. *Memorandum Record of Interview Made in Examinations Section*, dated November 28, 2001. In order to make a finding of inadmissibility based on a material misrepresentation, there has to be evidence that the applicant made a material representation(s) at the time of entry that differed from the representations in his signed statement. However, the signed statement does not address the representations made by the applicant on his visa form (i.e. Form I-94W, Arrival/Departure Record) or the representations made to the immigration inspections officer on September 23, 1989. Furthermore, there is not a copy of the relevant visa form in the record nor is there any indication that the applicant was ever asked the purpose of his trip by an immigration inspections officer. The issue at hand is whether the applicant misrepresented a material fact in order to obtain admission into the United States and the record is devoid of evidence which would prove this fact.

Based on the record, the AAO finds that there is no evidence that the applicant misrepresented a material fact and he is not inadmissible under section 212(a)(6)(C) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The appeal is dismissed as moot.