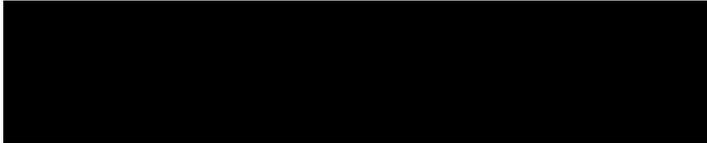




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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FILE:



Office: DENVER DISTRICT OFFICE

Date: OCT 28 2005

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:

SELF-REPRESENTED

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 Interim District Director, Denver, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the interim district director's decision will be withdrawn, and the waiver application declared moot.

The applicant is a native and citizen of Sudan who was found to be inadmissible to the United States 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 procuring a visa, other documentation, or entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of Interim District Director*, dated March 11, 2004.

The record reflects that on August 30, 1991 the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, in which he indicated that he first entered the United States in August 1981. On October 2, 2003 the applicant was interviewed in connection with a Form I-485, Application to Register Permanent Residence or to Adjust Status, in which he stated that his true first date of entry to the United States was June 13, 1988. When questioned regarding the discrepancy between his dates of first entry, the applicant stated that he misrepresented his entry date in his Form I-687 application due to his attorney's advice. Based on his misrepresentation in his Form I-687 application the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Upon review, the interim district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on information provided in the applicant's Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act.

Section 245A of the Act, 8 U.S.C. § 1255a, provides the following:

Temporary Residence Status

(c)(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 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.

- (B) Required disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

- (C) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

- (D) Construction.-
 - (i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

 - (ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

- (E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

- (6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

In the present case, the record contains no indication that the applicant engaged in fraud or made a willful misrepresentation on any other application except his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act. In addition, the record does not show that the applicant has been convicted for false statements in that or any other application. The AAO thus finds that the interim district

director was barred by statute from using the information on the applicant's Form I-687 and therefore erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is sustained, the interim district director's decision is withdrawn, and the waiver application declared moot.