



U.S. Citizenship
and Immigration
Services

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FILE:

Office: ANCHORAGE, ALASKA

Date: SEP 27 2006

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 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, Chief
Administrative Appeals Office

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 The district director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant is a native and citizen of El Salvador who entered the United States (U.S.) without lawful admission. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for falsely claiming U.S. citizenship in January 1993. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the U.S. with his U.S. citizen wife and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his U.S. citizen wife and denied the application accordingly. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) should not have found the applicant to be inadmissible, because he did not commit fraud or willfully misrepresent a material fact in order to gain admittance to the United States or a benefit under the Act.

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

(i) In general.- 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 record contains a Form I-213, Record of Deportable Alien, dated January 21, 1993, on which the immigration agent wrote that Anchorage Airport Police encountered the applicant loitering at the Anchorage airport with a group of people without airline tickets. The Form I-213 indicates that the applicant had in his possession a birth registration certificate in another name, showing the place of birth as Cotulla, Texas. The agent wrote that the applicant initially claimed to be a U.S. citizen but quickly admitted to being a citizen of El Salvador. The record does not include any sworn statement or other record of the immigration agent's encounter with the applicant.

There is no evidence on the record that the applicant was applying for or attempting to procure any benefit under the Act when he was encountered at the airport in Anchorage. The circumstances, including the language used, surrounding his initial claim to U.S. citizenship are not described in the record, but the fact that he quickly stated that he was a citizen of El Salvador indicates that the applicant was not attempting to obtain a benefit under the Act by willful misrepresentation. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to § 212(a)(6)(C)(i) of the Act. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to § 212(i) is also moot and will not be addressed.

ORDER: The district director's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot.