

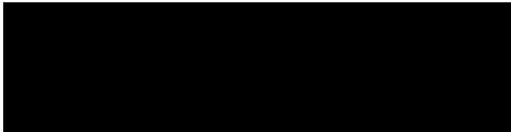
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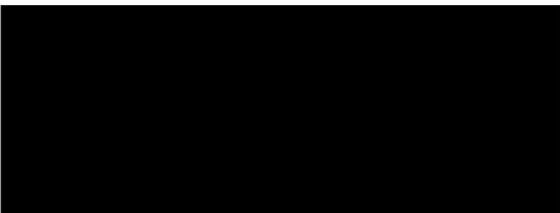


FILE: [REDACTED] Office: SAN FRANCISCO Date: DEC 27 2007

IN RE: Applicant: [REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of the Philippines 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 and reside with his U.S. citizen wife.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 21, 2004.

On appeal, prior counsel for the applicant asserted that the applicant did not commit fraud or misrepresentation, and thus he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief from Applicant's Prior Counsel*, at 6, dated August 5, 2004. The applicant's prior counsel further asserted that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to correctly apply the law or adequately consider the evidence submitted. *Id.* at 7-15.

The record contains a letter from the applicant's present counsel; briefs and correspondence from the applicant's former counsel; statements from the applicant and his wife; a copy of the birth certificate for the applicant's son; copies of tax, employment, and financial documents for the applicant and his wife; documentation in connection with the applicant's acquisition of a franchise and opening of a restaurant; a copy of the applicant's birth certificate; a statement from the applicant's wife's parents; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's passport; a copy of the applicant's marriage license; reports on conditions in the Philippines; a Form I-485, Application for Permanent Residence, filed on the applicant's behalf on December 3, 1992, and; a forensic analysis of the signatures on the December 3, 1992 Form I-485 and associated documentation. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a

United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant entered the United States on February 24, 1992 as a B-2 visitor for pleasure. The applicant explained that he sought to remain in the United States legally, and he was introduced to ██████████, who he believed to be an attorney. *Statement from the Applicant*, dated January 30, 2003. The applicant stated that Mr. ██████████ claimed to be able to obtain a legal status for him for \$5,000. *Id.* at 1. The applicant indicated that he provided the documentation requested by Mr. ██████████, including his passport, birth certificate, and other documentation. *Id.* The record reflects that a Form I-485, Application for Permanent Residence, was filed on the applicant's behalf on December 3, 1992. The applicant stated that "[he] trusted [Mr. ██████████] and unfortunately [he] did not ask him enough questions." *Statement from the Applicant* at 1. The applicant explained that, in approximately September 1993, he traveled to Los Angeles where he accompanied Mr. ██████████ to an Immigration and Naturalization Service office. *Id.* He stated that his picture was taken and he received a work authorization document, yet he "did not know or understand what application [Mr. ██████████] was filing on [his] behalf other than an application for work authorization." *Id.* The applicant indicated that "[a]t the time, [he] did not understand that you could not receive a work permit without another application being on file with the INS." *Id.*

The applicant explained that Mr. ██████████ renewed his work authorization "for several years," but that the applicant subsequently has been unable to locate him. *Id.* The applicant stated that he did not return to an INS office after his initial visit, but that Mr. ██████████ was able to renew his work authorization by mail. *Id.* at 1-2. The applicant stated that he did not attempt to renew his work authorization after losing contact with Mr. ██████████ *Id.* at 2.

The applicant met his wife on January 11, 1999, and they were married on August 23, 2002. *Id.* at 2-3. The applicant indicated that he filed a request under the Freedom of Information Act (FOIA) to obtain his immigration records in preparation for his wife to sponsor him to ultimately become a U.S. citizen. *Id.* at 3. The applicant provided that he then learned that Mr. ██████████ had filed a Form I-485 application on his behalf with incorrect information. *Id.* The applicant explained that he had never lived at the addresses provided in the application, and he did not know any of the people who submitted affidavits on his behalf. *Id.* The applicant stated that Mr. ██████████ did not read the information in the application to him, and the applicant did not sign the forms. *Id.* The applicant stated that he did not receive notice of the interview in connection with the Form I-485 application, and he did not return to an INS office after his initial visit to receive his work authorization document. *Id.* The applicant stated that he sought a new lawyer when he discovered that a fraudulent application had been filed. *Id.*

On March 17, 2003, the applicant filed a new Form I-485 application based on an approved Form I-130, Petition for Alien Relative, filed by his wife on his behalf. At an interview on December 17, 2003, representations in the December 3, 1992 Form I-485 application were confirmed to be false.¹ The applicant

¹ It is noted that the record lacks a clear description of what misrepresentations were made in the December 3, 1992 Form I-485 application, yet the applicant attests that the application contained numerous misrepresentations.

was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation.

On appeal, the applicant's former counsel asserted that the applicant did not willfully commit fraud or misrepresentation, as he was not aware that the December 3, 1992 Form I-485 application was filed, he did not sign it, and he did not approve its contents. *Brief from Applicant's Prior Counsel* at 6. Thus, prior counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Id.*

The record contains a forensic analysis of the signatures on the December 3, 1992 Form I-485 and associated documentation, conducted by [REDACTED], certified by the American Board of Forensic Examiners. Ms. [REDACTED] qualified her opinion "on the basis that poor quality photocopies of the questioned documents were examined and compared with several other poor quality photocopies of the standards," and "no contemporaneous signatures dated the same year as the questioned documents (1992) were provided to [her]." *Forensic Report*, at, dated January 30, 2003. However, Ms. [REDACTED] concluded that "there is a strong probability" that the applicant did not author the signature on the December 3, 1992 Form I-485 and associated documentation. *Id.*

The applicant submitted a statement from an attorney from his prior counsel's firm attesting that, after extensive efforts, they were unable to locate Mr. [REDACTED]. *Statement from Julie A. Casky, Van Der Hout & Brigagliano*, dated January 23, 2003. These efforts included searches of variations in Mr. [REDACTED] name with the California State Bar, in telephone directories in Los Angeles, on the internet, and by calling his last known phone numbers. *Id.* at 1.

Upon review, the record does not show by a preponderance of the evidence that the applicant willfully committed fraud or misrepresentation, such that he is inadmissible under section 212(a)(6)(C)(i) of the Act. Specifically, the applicant has provided sufficient evidence and explanation to show that he did not file the December 3, 1992 Form I-485 application that contained false information. According to the applicant's own statements, fraud and misrepresentation was committed by Mr. [REDACTED] on his behalf. Yet, the applicant was not aware that Mr. [REDACTED] was filing an application with incorrect information, and thus the applicant did not willfully commit fraud or misrepresentation. Section 212(a)(6)(C)(i) of the Act.

The AAO finds the forensic evaluation from Ms. [REDACTED] to be sufficient evidence to show that the applicant did not sign the December 3, 1992 Form I-485. Accordingly, the statements and representations in the application cannot be properly attributed to the applicant.

The record does not reflect that the applicant affirmed the representations in the December 3, 1992 Form I-485 application at an interview or other proceeding. The applicant stated that he visited an INS office on one occasion in connection with the December 3, 1992 Form I-485 application, in order to have his photograph made and to receive a work authorization document. The record contains no notes or documentation to indicate whether the applicant was asked substantive questions regarding the information contained in the December 3, 1992 Form I-485 application, thus it cannot be concluded that he affirmed its contents. The applicant did not attend a subsequent adjustment interview based on the December 3, 1992 application, and the Form I-485 contains no customary officer notes to show that the information was discussed or verified.

The December 3, 1992 application was denied on September 11, 1995 for failure to respond to a request for additional evidence, not based on a finding that the applicant presented false information.

It is noted that all representations in the record that can be positively attributed to the applicant are consistent and do not support the he willfully committed fraud or misrepresentation. Further, the applicant's account of his purpose in hiring Mr. [REDACTED] is plausible, and does not reflect an intent to circumvent the immigration laws of the United States.

The district director commented that the applicant benefited from the fraudulent December 3, 1992 Form I-485 application, as he received work authorization for several years. However, the fact that one benefits from fraud does not necessitate a finding that the fraud was willfully committed by the beneficiary. *See* section 212(a)(6)(C)(i) of the Act. The applicant essentially benefited from the fraud willfully committed by Mr. [REDACTED] not fraud willfully committed by the applicant. The AAO does not find the applicant's receipt of work authorization based on the December 3, 1992 application to be adequate support for a finding that he willfully committed fraud or misrepresentation.

Based on the foregoing, the record does not show by a preponderance of the evidence that the applicant willfully committed fraud or misrepresentation, such that he is inadmissible under section 212(a)(6)(C)(i) of the Act. The record contains no evidence that the applicant is inadmissible based on alternate grounds. Accordingly, the applicant is not inadmissible, he does not require a waiver of inadmissibility, and the present Form I-601 application will be declared moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 has met that burden.

ORDER: The appeal is dismissed as the waiver application is moot.