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U.S. Citizenship
and Immigration
Services

H2



FILE:



Office: ROME

Date:

MAY 21 2007

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:



PHOTOCOPY

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 Acting District Director (district director), Rome, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of the Czech Republic 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 enter the United States.

The district director concluded that the applicant does not have a qualifying relative who may serve as a basis for a waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 17, 2005.

On appeal, counsel for the applicant contends that expedited removal was wrongfully used to remove the applicant in 2001, and that the district director failed to recognize this fact. *Brief in Support of Appeal*, dated August 16, 2005. Counsel asserts that the district director wrongfully stated that an Immigration Judge ordered the applicant to depart the United States in 1994 and that the applicant had two prior overstays of her B status, which reflects that the district director did not understand or carefully review the applicant's immigration history. *Id.* at 4-5. Counsel further contends that the district director erroneously indicated that the applicant was removed by expedited removal in 2004, when in fact she was permitted to withdraw his application for admission. *Id.* at 8. Counsel asserts that "[s]ince the [applicant] did not receive expedited removal in 2004 as claimed by the Rome CIS office, and since the [applicant] was wrongfully placed into expedited removal in 2001 when the [applicant] should have had a hearing before an Immigration Judge pursuant to 8 C.F.R. 235.3(b)(3), the [applicant] should not have been required to file any waivers" *Id.* at 10.

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(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or

section 240, and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible.

The record reflects that the applicant obtained a B-1/B-2 visa on April 21, 1999. She entered the United States for the first time as a B-2 visitor for pleasure on May 15, 1999, with permission to remain until November 14, 1999. However, she departed the United States on May 30, 2000, six months and 16 days after her B-2 status expired.

On August 31, 2001, the applicant applied for entry to the United States in B-2 status at the Chicago O'Hare International Airport. However, she was placed in expedited removal and removed from the United States on the same day, as inspecting officers determined that she intended to enter the United States to work, which is not permitted in B nonimmigrant status. The record contains a Form I-860, Notice and Order of Expedited Removal, that notes that the applicant was inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act, and states the following: "At the time of [the applicant's] application for admission to the United States [she was] not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act." The record further contains a Form I-275, Withdrawal of Application for Admission/Consular Notification, in which the inspecting officer stated that the applicant "insisted on her prior entry, she was only vacationing Eventually, the [applicant] admitted . . . [she] worked, while in the U.S. doing construction work, including painting" *Form I-275*, dated August 31, 2001. The inspecting officer found that the applicant "was coming again to work." *Id.*

The applicant's mother-in-law became a naturalized United States in 2002, and she filed a Form I-130, Petition for Alien Relative, on behalf of the applicant's husband. The petition was approved, and on August 18, 2004, the U.S. Embassy in Prague issued Immigrant Visas to the applicant and her husband.

On September 15, 2004, the applicant applied for admission to the United States at the Newark Liberty International Airport. Inspecting officers determined that the applicant was still barred from entering the United States, as five years had not passed since her expedited removal on August 31, 2001. The applicant was permitted to withdraw her application for admission pursuant to a Form I-275, and she left the United States.

On or about October 12, 2004, the applicant filed the present Form I-601 Application for Waiver of Grounds of Inadmissibility. On June 17, 2005, the district director denied the application. Regarding the applicant's inadmissibility, the district director stated the following:

In 2001, the applicant, along with her then-boyfriend (now husband), attempted to enter the United States again on a B1/B2 tourist visa. Both she and her boyfriend were expeditiously removed, as it was determined that they were an [sic] intending immigrants rather than tourists, and that they had been employed without authorization from USCIS on a prior visit to the United States. The applicant was therefore deemed inadmissible for willful misrepresentation under Section 212(a)(6)(C)(i).

Decision of the District Director, dated June 17, 2005. The district director further stated the following:

The record also shows that the applicant was ordered to depart by an Immigration Judge in 1994 due to a prior overstay of over one year. While the applicant is not inadmissible for prior unlawful presence, the fact that she had 2 prior overstays shows repeated disregard for United States law. The applicant did not make note of this visit on the I-601 waiver application; this information was found while performing required system checks.

Id.

Upon review, the record does not support that the applicant is inadmissible to the United States, such that she requires the present Form I-601 application for a waiver.

The applicant entered the United States as a B-2 visitor for pleasure on May 15, 1999, with permission to remain until November 14, 1999. However, she departed the United States on May 30, 2000, 198 days after her B-2 status expired. Accordingly, pursuant to section 212(a)(9)(B)(i)(I) of the Act, from May 30, 2000, the applicant was barred from entering the United States for three years, until May 30, 2003. The applicant attempted to reenter the United States on August 31, 2001. Yet, as discussed above, she was refused entry and removed through the expedited removal process. The record does not reflect that she entered the United States at any time between her departure on May 30, 2000 and May 29, 2003. Thus, on May 30, 2003, the applicant ceased to be inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, and she does not require a waiver on this basis.

On August 31, 2001, upon the applicant's attempted entry to the United States, inspecting officers determined that she intended to enter the United States to work, which is not permitted in B nonimmigrant status. The inspecting officer noted on Form I-275 that the applicant "insisted on her prior entry, she was only vacationing Eventually, the [applicant] admitted . . . [she] worked, while in the U.S. doing construction work, including painting" *Form I-275*, dated August 31, 2001. The inspecting officer found that the applicant "was coming again to work." *Id.* However, the record does not support that the applicant made an affirmative misrepresentation, or that she committed fraud.

The record contains a Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, in connection with the applicant's inspection on August 31, 2001 that reports the questions that were asked, and the answers she provided. The applicant was initially asked what she was doing in the United States from May 15, 1999 to May 30, 2000, and she stated "traveling." *Form I-867A*, dated August 31, 2001. After being questioned about her sources of economic support, the applicant stated that her friend's sister arranged work for her, including construction and painting. *Id.* at 2-3. She clarified that she worked for about six months, and she traveled for about six months. *Id.* at 3. The interviewing officer asked "Is it not true, you were thinking in [sic] working again in the U.S.?" *Id.* The applicant responded "Yes, that is the thruth [sic]." *Id.*

In light of the questions asked and answers given during the applicant's August 31, 2001 inspection and interview, the record does not reflect that she attempted to conceal her prior work in the United States during her stay from May 15, 1999 to May 30, 2000, as she admitted she worked without having been asked directly if she had performed labor. Nor does the record reflect that the applicant attempted to conceal her intended activities in the United States in 2001, as she admitted she was contemplating working when asked. Thus, while the applicant's intention to work rendered her ineligible for admission in B status, the record does not support that she attempted to gain entry in B status by fraud or misrepresentation.

Individuals are free to apply for any immigration benefit for which they feel they may be eligible. The fact that they are ultimately deemed ineligible for a benefit, by itself, does not render their applications fraudulent or reflect that they committed misrepresentation. The fact that the applicant applied for entry to the United States in B status, and she was found ineligible for that status, does not, by itself, serve as a basis for finding that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

The district director stated that the applicant failed to disclose on Form I-601 that she was ordered to depart the United States by an Immigration Judge in 1994 due to a prior overstay of over one year. However, the record does not reflect that the applicant is inadmissible due to events that occurred in 1994, thus the applicant does not require a waiver due to such events. The only ground for inadmissibility stated for which the applicant may require a waiver pursuant to a Form I-601 application is section 212(a)(6)(C)(i) of the Act. The only document in the record that clearly states a finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act is the Form I-860, Notice and Order of Expedited Removal, in connection with the applicant's expedited removal on August 31, 2001. The Form I-860 stated:

You are ineligible for admission to the United States because:
At the time of your application for admission to the United States you were not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. And/or At the time of your application for admission, you were not in possession of a valid unexpired passport, or other suitable travel document, or document of identity and nationality.

Form I-860, Notice and Order of Expedited Removal, dated August 31, 2001. The applicant echoed this language on her Form I-601 application. Form I-601 instructs an applicant to report why she was declared inadmissible to the United States. The form or accompanying instructions do not require an applicant to provide a complete account of her U.S. immigration history. The applicant followed the instructions for a Form I-601 application by reporting the reasons CIS officers stated she was inadmissible to the United States for which she required a waiver. The record does not reflect that the applicant engaged in wrongdoing by declining to list her entire U.S. immigration history.

Thus, the record does not support a finding that the applicant committed fraud or misrepresentation at any time, such that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

Due to being found inadmissible under section 212(a)(7)(A)(i)(I) of the Act, the applicant was removed from the United States through the expedited removal process on August 31, 2001. This removal was pursuant to section 235(b)(1) of the Act, thus the applicant was subject to a bar to admission to the United States for a period of five years, until August 30, 2006. Section 212(a)(9) of the Act. The applicant filed a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, in order to overcome the five-year bar under section 212(a)(9) of the Act. However, as five years have passed since the applicant was removed on August 31, 2001, she is no longer inadmissible under section 212(a)(9) of the Act. Counsel contends that the applicant should not have been removed through expedited removal, suggesting that she should not have been subject to a bar to admission under section 212(a)(9) of the Act. Yet, as the applicant is no longer inadmissible under section 212(a)(9) of the Act, the AAO need not address this further.

The applicant attempted to enter the United States on September 15, 2004 pursuant to her Immigrant Visa. However, inspecting officers determined that she was still subject to the five-year bar under section 212(a)(9) of the Act. The applicant was permitted to withdraw her application for admission pursuant to a Form I-275, and she left the United States. Accordingly, the applicant was not subject to any grounds of inadmissibility due to this attempted entry.

Based on the foregoing, the applicant is not inadmissible to the United States under any provisions of the Act. Accordingly, she does not require a waiver of a ground of inadmissibility, and the present Form I-601 application is moot. The decision of the district director will be withdrawn, the Form I-601 application will be declared moot, and the appeal will be sustained.

ORDER: The decision of the district director is withdrawn, the Form I-601 application is declared moot, and the appeal is sustained.