



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: PHILADELPHIA, PA

Date:

JUL 15 2008

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:

[Redacted]

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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic. The record indicates that during the I-485, Application to Register Permanent Residence or Adjust Status (I-485) interview in March 2003, the applicant admitted that he had entered the United States in March 2001 by presenting a photo-substituted passport containing a U.S. visa. The applicant was thus 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 having procured entry into the United States by fraud or willful misrepresentation.

The 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 Grounds of Excludability (Form I-601) accordingly. In addition, due to conflicting testimony provided by the applicant and his U.S. citizen spouse at the applicant's I-485 interview, the district director concluded that the applicant had failed to establish a bona fide marriage with a U.S. citizen. Based on this conclusion, the district director concurrently denied the I-485 application and the underlying Form I-130, Petition for Alien Relative (I-130). *Decisions of the District Director*, dated March 26, 2003.

On April 21, 2003, counsel for the applicant submitted Form I-290B, Notice of Appeal. In said form, counsel stated as follows:

Petitioner and beneficiary have a bona fide marriage as described in the relevant case law and regulations. Detailed response to follow in brief and documentary evidence.

See Form I-290B. Counsel also indicated on the Form I-290B that he would need 30 days to submit a brief and/or evidence to the AAO in support of the appeal. On June 24, 2008, the AAO sent a fax to counsel, stating that to date, the AAO had no record that any further evidence or brief was ever received, and requesting that counsel submit a copy of the brief and/or evidence to AAO, along with evidence that it was originally filed with the AAO within the 30 day period requested, within five business days. No additional evidence was provided by counsel and/or the applicant in response to the AAO's fax. As such, the record is considered complete and will be reviewed in its entirety 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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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...

As the applicant's Form I-485 was denied in March 2003, the appeal with respect to the denial of the applicant's Form I-601 can not be reviewed and adjudicated by the AAO, as there is no underlying application for permanent residency relating to the applicant pending at this time.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.