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U.S. Citizenship
and Immigration
Services

142

[Redacted]

FILE:

[Redacted]

Office: Honolulu

Date: **MAY 09 2008**

AAO 07 1019 50015

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Inadmissibility pursuant to Section 212(a)(6)(C)(i) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182.

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act) because he admitted that he entered the United States fraudulently in January of 1981 with a passport that did not belong to him. The district director also determined that the applicant had used the same passport to fraudulently enter the country again in June 1983 and then utilized a different passport under another assumed name to obtain a nonimmigrant visa and fraudulently enter the United States for a third time in 1987. In addition, the district director determined that the applicant was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act because he had accrued more than one year of unlawful presence in this country. The district director concluded that the applicant's pattern of behavior showed a disregard for the laws of the United States and that it was not in the public interest to admit the applicant to this country. Therefore, the district director denied the Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility).

On appeal, counsel asserts that granting the Form I-690 waiver application was in the public interest as the applicant was a person of good moral character who paid his taxes, had not committed any crimes except minor traffic offenses, and was gainfully employed for a number of years.

Subsequent to the filing of the appeal, the applicant and his current counsel submitted a letter to the AAO on April 29, 2008 requesting that the appeal be withdrawn. Although this request to withdraw the appeal shall be honored, the following facts must be noted.

An applicant for permanent resident status under section 1104 of the Legal Immigration Family Equity (LIFE) Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods [from before January 1, 1982 to May 4, 1988], is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (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.

Section 1104(c)(2)(D) of the LIFE Act specifically references section 245A(d)(2) of the Act as that section of law to be utilized to determine applicable grounds of inadmissibility and whether a waiver is available to overcome such a finding. Section 245A(d)(2)(B)(i) of the Act permits the

Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, “in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” 8 C.F.R. § 245a.2(k)(2).

A review of the record reveals that the applicant filed a Form I-485 LIFE Act application on October 5, 2001. On June 7, 2006, the applicant submitted a Form I-690 waiver application in an attempt to overcome the ground of inadmissibility arising under section 212(a)(6)(C)(i) of the Act resulting from his actions and circumstances surrounding his entries into the United States with passports that had been issued in names other than his own true name.

With the Form I-690 waiver application, the applicant included a separate statement in which he claimed that he been employed as a cab driver since 1997. The applicant asserted that he paid taxes since 1993 and provided documents to support his assertion.

The district director determined that the applicant’s three entries into this country with passports that had been issued in names other than his own true name and his procurement of a nonimmigrant visa with an assumed name constituted acts of willful misrepresentation. The district director concluded that the applicant’s actions demonstrated a behavioral pattern and reckless disregard for the laws of the United States. Consequently, the district director found that the applicant’s admission was not in the public interest and denied the Form I-690 waiver application on July 27, 2006. Although the district director also determined that the applicant was inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act because he had accrued more than one year of unlawful presence in this country, this portion of the district director’s decision shall be withdrawn. For purposes of section 212(a)(9)(B)(i)(II) of the Act, Citizenship and Immigration Services or CIS (successor to the Immigration and Naturalization Service or the Service) has designated applicants for lawful permanent residence under the provisions of the LIFE Act to be in authorized status during the pendency of their applications through an administrative appeal.

On appeal, counsel asserted that granting the Form I-690 waiver application was in the public interest as the applicant was a person of good moral character who paid his taxes, had not committed any crimes except minor traffic offenses, and was gainfully employed for a number of years.

The term “in the public interest” is not defined in the Act or the regulations. In the precedent decision *Matter of P-*, the court adopted the definition at page 1106 of the fifth edition of Black’s Law Dictionary to determine that “public interest” was “something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.” *Matter of P-*, 19 I&N Dec. 823, at 828 (Comm. 1988)

During the adjudication of the appeal, information came to light that seriously impaired the character and credibility of the applicant. Specifically, the applicant submitted documentation that included an original envelope containing a postmark from the nineteenth day of an indeterminate

month in 1986 in support of his claim of residence in this country for the requisite period. The envelope was mailed from Pakistan, contained a Pakistani postage stamp, and was addressed to the applicant at "[REDACTED]" in Fort Pierce, Florida, the address he claimed as his residence beginning in April 1986. A review of the *2007 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2006), reveals the following regarding the Pakistani postage stamp affixed to the envelope:

- This envelope bears a postage stamp with a value of 7 rupees that contains a stylized illustration of three skulls inside the outline of an opium poppy above the phrase "Drug Abuse Society's Menace." This stamp commemorates 1989 as the South Asian Association for Regional Cooperation Year Against Narcotics. This stamp is listed at page 19 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* as catalogue number 724 A364. The catalogue lists this stamp's date of issue as December 8, 1989.

The fact that the applicant submitted an envelope postmarked in 1986 bearing a Pakistani postage stamp that was not issued until well after the date this envelope was purportedly mailed established that he once again utilized a document in a fraudulent manner and made material misrepresentations in an attempt to obtain permanent resident status under the provisions of the LIFE Act.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO issued a notice to the applicant on March 5, 2008 informing the applicant that it was the AAO's intent to dismiss his appeal as a result of the derogatory information cited above. The applicant was also informed that he had again engaged in fraud and willful misrepresentation of material facts by engaging in such action. The applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, counsel submitted a request for an extension to reply to the notice. The record shows that the applicant and counsel were granted an extension to April 5, 2008 to submit a response to the notice. The record reflects that counsel subsequently submitted a request for a telephonic conference with the officer adjudicating the applicant's appeal. However "off the record" or ex parte communications between an interested party and a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding are prohibited by section 557(d)(1) of the Administrative Procedure Act. As of the date of this decision neither the applicant nor counsel has submitted a statement, brief, or evidence addressing the adverse information relating to the applicant and his use of a fraudulent document.

The fact that the applicant utilized a postmarked envelope in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted a falsified document, we affirm our finding of fraud.

The applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact on four separate occasions. The applicant has consistently engaged in a pattern of behavior demonstrating a blatant disregard for and intent to subvert the immigration laws and regulations of the United States. Consequently, it cannot be considered to be in the public interest to waive the applicant's inadmissibility as allowed under section 245A(d)(2)(B)(i) of the Act. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed based upon the applicant's withdrawal with a separate finding of fraud. The waiver application is denied.