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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA

Date:

OCT 29 2008

IN RE:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 with his spouse.

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. *See Decision of the District Director*, dated March 12, 2003.

The applicant did not specify the reasons for the appeal on Form I-290B, *Notice of Appeal to the AAO*, but in a letter filed with the waiver application, counsel for the applicant asserts that the applicant did not enter the United States by presenting a fraudulent passport, and the determination that he did so was based on a miscommunication during his interview for adjustment of status. *Counsel's Letter in Support of I-601 Application* at 1. Counsel states that the applicant entered the United States in a car driven by an individual who presented his own passport, but that the applicant was himself not questioned about his citizenship status and did not present any documentation. *Id.* In support of the waiver application, counsel submitted a declaration by the applicant describing his entry into the United States on January 1, 1997. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States at Niagara Falls, New York on January 1, 1997. According to the decision of the district director, the applicant stated during his interview for adjustment of status that when inspected by an immigration officer on that date, he presented the passport of the individual who was driving the car in which he was traveling. *See Decision of the District Director*, dated March 12, 2003. In his declaration, the applicant states,

[I]t was a clear misunderstanding between the INS officer and me regarding the manner in which I entered the United States. I kept saying I came with someone with a passport, meaning that someone who had a passport took me over the border from Canada. That I never used a false passport to enter the United States. I was not even inspected. Nobody noticed that I was in the car. At the border when the driver of the car stopped he showed his own passport. He was not asked if there were any passengers in his car. It was night and dark and the windows of the car were tinted. *Declaration of* [REDACTED] dated April 15, 2002.

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

- (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.

The district director based the determination that the applicant was inadmissible under section 212(a)(6)(C) of the Act on statements made during his interview for adjustment of status. The applicant asserts that he did not state that he had gained admission by presenting the passport of another individual, and that the conclusion of the district director was based on a misunderstanding. The record contains no documentation of the statements made by the applicant during his interview, such as a signed record of sworn statement or notes of the interviewing officer. Further, there are no other records in any government database concerning the applicant's entry into the United States. There is no documentation to support the conclusion reached by the district director, and this determination is refuted by the applicant, who provided a detailed declaration describing his entry into the United States and his testimony during his interview for adjustment of status. The AAO therefore finds that the evidence on the record is insufficient to support a determination that the applicant gained admission to the United States by presenting a fraudulent passport. The applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and the waiver application filed pursuant to section 212(i) of the Act is therefore moot.

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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn, and the application for a waiver of inadmissibility is declared moot. The director shall reopen the denial of the applicant's application for adjustment of status (Form I-485) on Service motion and continue processing the adjustment application.