

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H2



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 10 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:



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 Director, California Service Center, 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 Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring or seeking to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the father of a U.S. citizen and is the beneficiary of an approved Immigrant Petition for Alien Worker. 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 son.

The service center 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 Service Center Director*, dated March 22, 2006.

On appeal, counsel asserts that the decision of U.S. Citizenship and Immigration Services (CIS) to deny the waiver application was arbitrary and capricious and not supported by the evidence on the record. *See Notice of Appeal to the AAO (Form I-290B)*. Specifically, counsel claims that the evidence on the record established that the applicant's son would experience extreme emotional hardship if he were separated from the applicant, who provides financial support and visits his son regularly. *See letter from counsel in support of appeal* dated April 18, 2006. Counsel submitted additional documentation with the appeal to further document the hardship to the applicant's son that would result if he were removed from the United States.

The record reflects that the applicant entered the United States without inspection on or about April 29, 1988 at or near Brownsville, Texas. On December 5, 1988, he submitted a Request for Asylum in the United States (Form I-589), and his asylum application was denied when he failed to appear his interview with the Immigration and Naturalization Service (now CIS) on March 8, 1989. The applicant stated on his application for adjustment of status (Form I-485) that he "applied to become a resident" in 1989 and was given a temporary residency card. At his interview he submitted a temporary resident card (Form I-688) and a letter from the Immigration and Naturalization Service dated October 3, 1989 stating that he had submitted an application for legalization. The alien number listed on these documents does not belong to the applicant, and when asked, the applicant stated that he had paid someone \$1500 to obtain these documents, and it was determined that the documents were forgeries.

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.

In a letter dated May 26, 2005, the Officer in Charge of the CIS office in Providence, Rhode Island informed the applicant that he was inadmissible under section 212(a)(6)(C)(i) of the Act, stating: "It appears that you filed a frivolous asylum request in 1988. You also appear to have obtained a counterfeit temporary resident card." *See letter from the Officer in Charge* dated May 26, 2005.

The applicant's Request for Asylum in the United States contains a few very brief and general statements in response to the questions concerning why he fears returning to his country. He states he will have problems and he fears for his security and further states: "I'm a democratic person and in my country will be obligated to participate in organizations against the [democracy]." The applicant never appeared for an interview and therefore never provided testimony in support of this application, and it was denied in 1989. Although the Officer in Charge determined the application to be frivolous, there is no information on the record to support the finding that the applicant knowingly and willfully misrepresented a material fact when he submitted the application. There is no indication that the applicant was asked about the statements made on his asylum application, and the record does not establish that the very general responses in the application are false or that if they are, the applicant knowingly provided false information.<sup>1</sup> The applicant is therefore not inadmissible under section 212(a)(6)(C)(i) due to his submission of Form I-589 in 1989.

The record further indicates that the applicant paid an unknown individual to obtain a fraudulent temporary resident card and a letter stating that he had filed an application for legalization. It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). There is no indication on the record that the applicant made any misrepresentation to a government official to obtain a temporary resident card or that he used the card to obtain any other document or benefit provided under the Act. Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for obtaining or possessing these fraudulent documents.

Based on the record, the AAO finds that the applicant, in submitting an asylum application and obtaining a fraudulent temporary resident card and related documentation, did not commit fraud or misrepresent a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. He 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 application. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The appeal is dismissed as moot.

---

<sup>1</sup> The AAO notes that the Office in Charge characterized the asylum application as "frivolous". Although the filing of a frivolous asylum application after April 1, 1997 can render an alien ineligible for benefits under the Act, such a determination can only be made by an immigration judge or the Board of Immigration Appeals after giving the applicant an opportunity to provide an explanation for any discrepancies or implausible aspects of the claim. See *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007).