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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

AUG 19 2003

FILE# [Redacted]

Office: CHERRY HILL, NJ

Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(i).

ON BEHALF OF APPLICANT: [Redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cherry Hill, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant is a native and citizen of Guatemala who entered the United States (U.S.) without a lawful admission or parole. The applicant was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(2)(A), for obtaining a false alien registration card and social security card and using the documents to gain employment in the United States. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i) in order to reside in the U.S. with his U.S. citizen wife and child.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on his U.S. citizen wife and denied the application accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service ("Service", now the Bureau of Citizenship and Immigration Services, "Bureau") erred in not considering hardship to the applicant's U.S. citizen child pursuant to section 212(h) of the Act. Counsel additionally asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C) of the Act because he did not commit fraud or willfully misrepresent a material fact to a U.S. government official. Counsel asserts further that the Service misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's qualifying relatives.

Section 212(a)(2)(A) of the Act states, in pertinent part, that:

(2) Criminal and related grounds.-

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude

(other than a purely political offense or an attempt or conspiracy to commit such a crime) . . . [is inadmissible.]

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year

. . . .

Section 212(h) provides in pertinent part that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A) (i) (I) . . . of subsection (a) (2) . . . if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that-

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status, or

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the

spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The district director found that the applicant committed a crime involving moral turpitude because he violated the following provisions contained in Title 18 U.S.C. §1546:

Whoever knowingly . . . utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained

In *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the Board of Immigration Appeals ("Board") found that a conviction pursuant to 18 U.S.C. § 1546, did not constitute a conviction for a crime involving moral turpitude. In support of its decision, the Board stated:

[W]e have acknowledged that the violation of statutes which merely license or regulate and impose criminal liability without regard to evil intent do not involve moral turpitude.

Matter of Serna at 583. (Citations and quotations omitted). The Board stated further that:

The statute [18 U.S.C. § 1546] under which the respondent was convicted does not specifically include the element of fraud. Although it requires knowledge that the immigration document was altered, such knowledge is not necessarily equated with the intention to use the document to defraud the United States Government.

Id. at 585. As a result, the Board concluded that the crimes set forth in Title 18 U.S.C. § 1546, were not crimes involving moral turpitude.

Based on the reasoning set forth in *Matter of Serna*, the AAO finds that the district director erred in finding that the

applicant's procurement and use of a false social security card, in violation of 18 U.S.C. §1546, constituted a crime involving moral turpitude. Because it has not been established that the applicant is inadmissible under section 212(a)(2)(A) of the Act, the issues regarding whether the applicant qualifies for an exception or whether the district director correctly assessed hardship to the applicant's child under section 212(h) of the Act are moot and will not be addressed.

The district director's decision additionally states that the applicant admitted that he knowingly and illegally purchased and used a false alien resident card to work in the United States, and that these actions constituted a violation of section 212(a)(6)(C) of the Act.

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

(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.

. . . .

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides in pertinent part that:

(1) The Attorney General [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 alien 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.

On appeal, counsel asserts that in order to be inadmissible under section 212(a)(6)(C) of the Act, the fraud or willful misrepresentation of a material fact must be made to an authorized official of the U.S. government. The AAO agrees.

In *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), the Board stated:

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 excludability under section 212(a)(6)(C)(i) of the Act to be found.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation to a U.S. government official when he bought a fraudulent alien registration card and social security card, or when he worked illegally. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is also moot and will not be addressed.

ORDER: The district director's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot.