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

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

[REDACTED]

FILE: [REDACTED]

Office: Boston

Date:

JUL 24 2003

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]

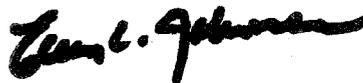
INSTRUCTIONS:

This is the decision 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.



Robert P. Wiemann, Director
Administrative Appeals Office

JUL2403_02H2212

DISCUSSION: The application was denied by the District Director, Boston, Massachusetts, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO affirmed that decision on two subsequent motions to reopen. The matter is before the AAO on a third motion to reopen. The motion will be granted, and the orders affirming the district director's decision and dismissing the appeal will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of India who was 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 sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of the ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Information in the record indicates that the applicant attempted to procure admission into the United States in September 1993 by presenting a photo-switched passport. The record contains an order from an immigration judge indicating that the applicant was ordered excluded and deported from the United States *in absentia* on October 2, 1998. He has failed to depart.

The district director determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The AAO affirmed that decision on appeal and on two subsequent motions.

On third motion, counsel states that the applicant came to the airport with no passport, and he did not have a visa or proper documents. Counsel states that he should not be charged with being inadmissible for fraud as the charging document (Form I-122) does not charge him with being inadmissible for fraud under section 212(a)(6)(C)(i). It is noted that this issue was raised in previous motions, but was not addressed.

On motion, counsel refers to the Form I-122 Notice to Applicant for Admission Deferred for Hearing before Immigration Judge, a copy of which is contained in the record. That document indicates that the applicant was deferred for proceedings under section 212(a)(7)(A) and (B) of the Act, 8 U.S.C. § 1182(a)(7)(A) and (B), relating to documentary requirements.

The present record contains only copies of the November 23, 1993 Form I-122 and the October 8, 1998 order of the immigration judge, to reflect the applicant's inadmissibility. Although specific documentation may have been present in past proceedings for review in the form of a sworn statement, question and answer affidavit, photocopy of the photo-switched passport or a charging document clearly specifying that the applicant was charged with being inadmissible under section 212(a)(6)(C)(i) of the Act, the present record is devoid of evidence of such fraud.

Therefore, the orders dismissing the two previous motions and the appeal will be withdrawn. The matter will be remanded to the district director to review the applicant's entire Bureau file to determine if the applicant was actually charged with fraud by the Bureau, admitted to fraud in a sworn statement, or was ordered excluded and deported on October 2, 1998, for having committed fraud. If evidence of fraud is found, the district director shall forward the entire record to the AAO for review and the entry of a new decision. If evidence of fraud is not found, the district director shall enter a new decision on a Bureau motion to reopen based on the entire record as constituted. Then, if such decision is adverse to the applicant, the matter shall be certified to the AAO for review.

ORDER: The motion is granted. The orders affirming the district director's decision and dismissing the appeal are withdrawn. The matter is remanded to the district director for further action per the above discussion and the entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.