



H14

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted] Office: MONTERREY, MEXICO

Date:

MAY 21 2001

IN RE: Applicant:



Application: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(B)(v)

IN BEHALF OF APPLICANT:



Identifying information to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Officer in Charge, Monterrey, Mexico, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Jamaica who was found by a consular officer to be inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant married a United States citizen in 1998 and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to travel to the United States to reside with his spouse and children.

In his denial of the applicant's waiver request, the officer in charge noted the consular officer's finding of inadmissibility under § 212(a)(9)(B)(i)(II) of the Act and also found the applicant inadmissible under § 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having attempted to procure admission into the United States on January 4, 1995 by falsely claiming to be a United States citizen. The officer in charge then concluded that the applicant was statutorily ineligible to file an application for waiver of inadmissibility and denied the application.

On appeal, counsel states that a brief and/or evidence will be submitted within thirty days of filing the appeal. Since more than six months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

The record reflects that the applicant was present in the United States without a lawful admission or parole from 1993 until on or about March 1998. The applicant was unlawfully present in the United States for a period of more than 180 days but less than one year - from April 1, 1997, the date the calculation for unlawful presence begins, until his departure in March 1998. The applicant is therefore inadmissible to the United States under §212(a)(9)(B)(i)(I) of the Act, 8 U.S.C 1182(a)(9)(B)(i)(I).

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(9) ALIENS PREVIOUSLY REMOVED.-

* * *

(B) ALIENS UNLAWFULLY PRESENT.-

(i) IN GENERAL.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to § 244(e) [1254]) prior to the commencement of proceedings under § 235(b)(1) or § 240 [1229a], and again seeks admission within 3 years of the date of such alien's departure or removal, is inadmissible.

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

* * *

(v) WAIVER.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record also reflects that the applicant sought to procure admission into the United States on January 21, 2000 at Newark International Airport in Newark, New Jersey, by presenting a U.S. birth certificate issued in St. Thomas, U.S. Virgin Islands. At that time it was also discovered that the applicant had been (1) convicted on January 31, 1991 in Toronto, Ontario, Canada for the offense of attempted obstruction of justice for which he was fined \$400.00; (2) arrested on January 4, 1995 by USINS in Buffalo New



York for false claim to United States citizenship and illegal entry for which he was placed in § 247C proceedings and fined \$1,500.00; and (3) convicted on June 19, 1995 in Newburgh, New York, for the offense of unlawful possession of marijuana (amount unspecified) for which he was fined \$100.00.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) 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.

(ii) FALSELY CLAIMING CITIZENSHIP.-Any alien who falsely represents, or has falsely represented himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including § 274A [1324a]) or any other Federal or State law is inadmissible.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997).

Section 212(a)(6)(C)(ii) applies to false representations of citizenship made on or after September 30, 1996. By its plain language, this ground requires a showing that the false representation was made for a specific purpose: to satisfy a legal requirement or to obtain a benefit that would not be available to a noncitizen. This requirement also suggests that the individual must know that the representation is false.

To recapitulate, the record establishes that the applicant was found by a consular officer to be ineligible for admission into the United States due to unlawful presence. It appears that his unlawful presence was for a period of more than 180 days but less than one year and that he therefore ineligible for admission under § 212(a)(9)(B)(i)(I) of the Act. The officer in charge subsequently determined that the applicant is also ineligible for admission under § 212(a)(6)(C)(ii) of the Act. Although the applicant is eligible to apply, and has applied in the instant case, for a waiver of inadmissibility as provided under § 212(a)(9)(B)(v), there is no waiver available for a finding of inadmissibility under § 212(a)(6)(C)(ii).

Service instructions at O.I. 212.7 provide that after receipt by a Service office, if grounds of inadmissibility other than those for which the waiver is sought are discovered, the application and all relating documents should be returned to the consular officer for reconsideration. Therefore, the applicant's appeal will be rejected and the decision of the officer in charge will be withdrawn. The officer in charge should return the application and all relating documents to the consular officer for reconsideration.

ORDER: The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion.

03/08/01/AAOPXNO1/G/73346138.601