

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

tlc

PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: CHICAGO , IL

Date:

JAN 30 2007

IN RE:

[Redacted]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared moot because the applicant is presently a lawful permanent resident of the United States.

The record reflects that the applicant is a native and citizen of Nigeria who was found to be inadmissible under sections 212(a)(2)(A)(i)(I), 212(a)(6)(C)(i) and 212(a)(9)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), 1182(a)(6)(C)(i) and 1182(a)(9)(C), for having been convicted of a crime involving moral turpitude, procuring admission into the United States by fraud or willful misrepresentation and for being an alien who entered the United States illegally after having being previously removed from the United States. The applicant is married to a U.S. citizen and is the father of U.S. citizen children. Since the applicant was found inadmissible pursuant to section 212(a)(9)(C) of the Act for being an alien who entered the United States within 20 years after having entered the United States illegally after being previously removed from the United States, he seeks permission to reapply for admission into the United States under section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), in order to remain in the United States.

The record reflects that, on September 30, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his U.S. citizen wife. On March 18, 1999, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois District Office. The applicant testified that, in 1990, he entered the United States without inspection and had been previously removed on one occasion, July 24, 1986. On April 6, 1999, the applicant was granted Permission to Reapply for Admission (Form I-212), in relation to his reentry into the United States after his July 24, 1986, removal. On April 6, 1999, the applicant was admitted as a lawful permanent resident of the United States. On June 3, 2003, the applicant applied for admission to the United States at the Chicago, Illinois Port of Entry by presenting his lawful permanent resident card. The applicant was placed into secondary inspections when immigration officers discovered a lookout match for the applicant. In the course of the secondary inspection it was discovered that, during his lawful permanent resident interview, the applicant failed to disclose that he had previously entered the United States by fraud or willful misrepresentation when he procured admission to the United States on March 16, 1986, by presenting fraudulent documents. It was discovered that the applicant had failed to disclose that, on November 19, 1984, he had been convicted of felony theft, a crime involving moral turpitude, and was sentenced to 30 months of probation. Finally, it was also discovered that the applicant had failed to disclose that he had reentered the United States after having been ordered removed by an immigration judge, not only in July 1986, but also on January 13, 1986.

On October 27, 2003, the applicant was notified of CIS' intent to rescind his lawful permanent resident status due to his inadmissibility under sections 212(a)(2)(A)(i)(I), 212(a)(6)(C)(i) and 212(a)(9)(C) of the Act. The applicant was informed that he might submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why his lawful permanent resident status should not be rescinded. On December 1, 2003, the applicant's counsel responded to CIS' Notice of Intent to Rescind Lawful Permanent Resident Status, indicating she would file *nunc pro tunc* waiver applications and requesting a hearing before an immigration judge if the Application for Waiver of Grounds of Inadmissibility (Form I-601) and Form I-212 were denied. Counsel filed a sworn affidavit made by the applicant's wife with the response. However, the applicant's wife's sworn affidavit did not address whether the applicant admitted CIS' allegations and there was no sworn affidavit from the applicant accompanying the response. On December 23, 2003, the applicant filed the Form I-601 and Form I-212. On March 21, 2005, the district

director determined that the applicant's Form I-212 was frivolously filed because he was currently a lawful permanent resident and denied the Form I-212 accordingly.

On appeal, counsel asserts that the district director's decision should be reversed, or the case remanded for consideration by the district director or referred to an immigration judge pursuant to section 246 of the Act, 8 C.F.R. § 1256. Counsel asserts further that the applicant did not misrepresent any material facts at the time of his lawful permanent residency interview and that he should be granted permission to reapply for admission because his wife and children would suffer extreme hardship if he were removed from the United States and the applicant warrants a favorable exercise of discretion.

The record contains no evidence to establish that immigration court rescission proceedings were commenced or carried out against the applicant or that the district director has rescinded the applicant's lawful permanent resident status. Moreover, the district director's denial of the Form I-212 indicates that the applicant remains a lawful permanent resident of the United States. The AAO additionally notes that Executive Office of Immigration Review (EOIR) and relevant CIS database records do not indicate that the applicant was placed into immigration court rescission proceedings or that his lawful permanent resident status was rescinded.

Section 246(a) of the Act, 8 U.S.C. § 1256(a) states:

- (a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 or section 249 of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General [now Secretary, Homeland Security, Secretary] that the person was not in fact eligible for such adjustment of status, the Attorney General [Secretary] shall rescind the action taken granting an adjustment of status to such person and canceling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General [Secretary] to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.

8 C.F.R. § 246 states in pertinent part:

- (1) Notice. If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case . . . a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense

to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

(2) Allegations admitted; no answer filed; no hearing requested. If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, the district director . . . shall rescind the adjustment of status previously granted, and no appeal shall lie from his decision.

(3) Allegations contested or denied; hearing requested. If, within the prescribed time following service of the notice pursuant to § 246.1, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to § 246.5 shall be conducted by an immigration judge, and the requirements contained in §§ 240.3, 240.4, 240.5, 240.6, 240.7, and 240.9 of this chapter shall be followed.

(4) Immigration judge's authority; withdrawal and substitution. In any proceeding conducted under this part, the immigration judge shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case.

The AAO found no evidence in the present record, or in the EOIR or centralized CIS computer databases, to establish that immigration court rescission proceedings were commenced against the applicant or that the lawful permanent resident status granted to the applicant in 1999, was rescinded in accordance with section 246 of the Act. Accordingly, the AAO finds that the applicant continues to hold lawful permanent resident status (granted in 1999). The AAO finds further that, because the applicant is a lawful permanent resident, the Form I-212 is moot.

ORDER: The appeal is dismissed and the application declared moot.