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

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H2 MAR 08 2005

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date:

IN RE: Applicant: [redacted]

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

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who attempted to procure admission into the United States on June 8, 1975, by presenting a fraudulent alien registration receipt card (I-151). The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish eligibility for the § 212(i) waiver, since the applicant did not have a qualifying relative. On appeal, counsel asserts that the statutory requirements under § 212(i) deprive the applicant of his due process rights. Counsel also maintains that the applicant was never convicted of any violation which would subject him to the grounds of inadmissibility at § 212(a)(6)(C)(i) of the Act. In support of the latter assertion, counsel submits four statements of no criminal record from state and county authorities in California and Washington.

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

> (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.

Section 212(i) of the Act provides that:

> (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 ecision or action of the Attorney General regarding a waiver under paragraph (1).

Counsel's argument that the waiver requirements under § 212(i) of the Act violate the applicant's contitutional right to due process should be made in a judicial, rather than administrative, forum. The AAO has no jurisdiction over constitutional issues concerning due process rights. Moreover, Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in

seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, section 274C of the Act, 8 U.S.C. § 1324c. was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

Counsel asserts that there exists no record of any conviction. The AAO points out that, according to § 212(a)(6)(C), there is no requirement that an alien be convicted of a crime in order to be found inadmissible under this provision. However, the record in this case contains ample official documentation of the applicant's June 9, 1975 conviction under 18 USC § 371, for conspiracy to commit offense or to defraud United States, and 18 USC § 1325, for improper entry by alien. Counsel could have obtained copies of these documents from Citizenship and Immigration Services (CIS) by filing a request under the Freedom of Information Act. The lack of a criminal record on file with state or county authorities is not surprising, given that such agencies usually dispose of records after a certain period of time.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Qualifying family members under this section would be the U.S. citizen or lawfully resident (LPR) spouse or parent of an alien. The record does not indicate that the applicant has a U.S. citizen or LPR spouse or parent, thus he is ineligible for the waiver persuant to § 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.