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U.S. Department of Homeland Security
20 Massachusetts Avenue N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

[redacted]

H2

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date JAN 26 2009
[consolidated therein]

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 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.

Michael Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the director's decision withdrawn, and the waiver application declared moot.

The record reflects that the applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact in an attempt to obtain an immigration benefit. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse and children.

The Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated September 8, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection on November 28, 1988. *See Record of Sworn Statement in Affidavit Form*, dated November 3, 1993. In November 1993, the applicant filed an Application for Status as a Temporary Resident (Form I-687). On November 3, 1993, the applicant admitted misrepresenting facts material to his eligibility for temporary resident status. On February 13, 1995, the applicant filed an Application for Asylum and Withholding (Form I-589). On March 28, 2001, the applicant's wife, a lawful permanent resident of the United States at that time, filed a Form I-130 on behalf of the applicant. On November 9, 2001, the applicant's wife became a United States citizen. On March 19, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On July 7, 2006, the applicant filed a Form I-601. On September 8, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On October 5, 2006, the applicant filed a motion to reopen the denial of his Form I-485.

The record reflects that the applicant was found to be inadmissible under section 212(a)(6)(C) of the Act for giving false testimony during a November 3, 1993 interview in connection with the applicant's legalization application under section 245a of the Act.

Section 245a of the Act, 8 U.S.C.§ 1255a, which pertains to the adjustment of status of certain entrants before January 1, 1982, to that of a person admitted for lawful residence, states in pertinent part:

> (c)(5) Confidentiality of information.-
>
> > (A) In general.-Except as provided in this paragraph, neither the Attorney General [now Secretary of Homeland Security, "Secretary"], nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The [Secretary] shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The [Secretary] may provide, in the [Secretary's] discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

> (6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

In the present case, a review of the record does not demonstrate that the applicant defrauded or made a willful misrepresentation on any other application except on his legalization application. In addition, the applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the Director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and need not be addressed.

ORDER: The appeal is dismissed, the Director's decision withdrawn and the waiver application declared moot. The matter is returned to the Director for continued processing of the applicant's Form I-485 application.