U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 21 2009

IN RE: [redacted]

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,
Acting Chief Administrative Appeals Office

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

The applicant, [redacted], is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility pursuant to section 212(i), 8 U.S.C. § 1182(i), of the Act. The director concluded that the applicant does not have a qualifying relative through whom a claim of extreme hardship may be made, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated April 17, 2007. The applicant submitted a timely appeal.

On appeal, counsel states that U.S. Citizenship and Immigration Services (USCIS) claims that on February 8, 1972, [redacted] attempted to enter the United States with a counterfeit document. Counsel asserts that USCIS failed to provide supporting evidence establishing that Mr. [redacted] committed fraud or a willful misrepresentation of a material fact. Counsel contends that in view of the fact that the alleged fraud or misrepresentation occurred more than 34 years ago, and [redacted] has been issued a visa that permits him to enter the United States, any act of wrongdoing by the applicant has been vitiated and waived. For this reason, counsel states that USCIS erred when it claimed that [redacted] requires a waiver application. Counsel also states that USCIS erred by not considering a discretionary waiver under section 212(h) of the Act, for which the applicant qualifies. Counsel, citing to the Ninth Circuit Court of Appeals decision *Ventura v. I.N.S.*, 264 F.3d 1150 (9th Cir. 2001), *rev'd*, 537 U.S. 12 (2002), states that the AAO cannot substitute its judgment for that of the Los Angeles Office when the original adjudicatory agency has not rendered a decision on the issues presented as a matter of initial adjudication.

The AAO will first address the finding of inadmissibility.

Counsel contends that [redacted] is not inadmissible for seeking admission into the United States by fraud or willful misrepresentation. The AAO disagrees. The record reflects that on February 8, 1972, in the United States District Court for the Southern District of California, Mr. [redacted] was charged with and found guilty of knowingly and willfully entering the United States at a time and place other than as designated by immigration officers in violation of 8 U.S.C. § 1325. The judge sentenced him to imprisonment for 27 days.

The statute under 8 U.S.C. § 1325 reads as follows:

> (a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

> Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

. . .

Immigration forms contained in the record reflect that in an attempt to gain entry into the United States, [redacted] knowingly and willfully presented to the inspecting officer at the San Ysidro, California, port of entry an Alien Registration Receipt Card (Form I-151) that had been counterfeited and illegally obtained. [redacted] admitted to purchasing the counterfeit Form I-151 from an unknown man for $225.

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.

In view of the record before the AAO, [redacted] is clearly inadmissible under section 212(a)(6)(C) for seeking to gain admission into the United States through the use of a counterfeit Form I-151.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

Based upon his conviction, the applicant is also inadmissible under section 212(a)(2) of the Act for having committed a crime involving moral turpitude. That section states, in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense)
or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

As previously discussed, the applicant was convicted on February 8, 1972, of violation of 8 U.S.C. § 1325. In determining whether the applicant's crime involved moral turpitude, the AAO turns to *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), wherein the BIA held that use and possession of an altered visa with knowledge that it was altered is a crime involving moral turpitude. Based on the holding in *Matter of Serna*, the applicant's crime involves moral turpitude because he attempted to enter the United States using a counterfeit Form I-151 that he had purchased. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212 of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

In this decision the AAO will address both the section 212(i) and 212(h) waivers.

[redacted] would be eligible for consideration a waiver of inadmissibility under section 212(h)(1)(A) of the Act since his crime occurred more than 15 years ago. However, the record does not reflect that [redacted] is eligible to apply for a waiver under section 212(i) of the Act which requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. On his waiver application, Mr. [redacted] son is listed as his qualifying relative. An applicant's children are not qualifying relatives. [redacted] does not indicate that he has a citizen or lawfully resident spouse or parent. In view of the record before the AAO, [redacted] is not eligible to apply for a waiver under section 212(i) of the Act.

Counsel contends that since [redacted] alleged fraud or misrepresentation occurred more than 34 years ago, and since [redacted] has been issued a visa that permits him to enter the United States, any act of wrongdoing by [redacted] has been vitiated and waived.

The AAO finds counsel's contention unpersuasive. [redacted] is seeking a waiver under section 212(i) of the Act for inadmissibility under section 212(a)(6)(C)(i) of the Act. He seeks this waiver so as to qualify for adjustment of status under section 245 of the Act. [redacted] is not applying for a nonimmigrant visa; he is seeking a waiver of inadmissibility so as to adjust status. His inadmissibility under section 212(a)(6)(C)(i) of the Act has not been waived based on passage of time or by the issuance of a nonimmigrant visa. Counsel, furthermore, has submitted no legal authority in support of his proposition that the passage of time or the issuance of a nonimmigrant visa waives inadmissibility under section 212(a)(6)(C)(i) of the Act.

Based upon the foregoing discussion and the record before the AAO, the applicant is not eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. Although he may be eligible to apply for a waiver under section 212(h) of the Act, no purpose would be served in discussing a section 212(h) waiver in view of the fact that [redacted] is statutorily ineligible for a section 212(i) waiver.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.