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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: BOSTON, MA Date: SEP 30 2009

IN RE: [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.

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Brazil 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 procuring a visa to the United States through fraud or willful misrepresentation. The applicant is the father of two U.S. citizen children. He 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 family.[1]

The field office director concluded that the applicant had failed to establish eligibility for the waiver as he is not the spouse or son of a U.S. citizen or lawful permanent resident and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 12, 2008.

On appeal, counsel states that the applicant challenges some of the factual allegations in the decision, the decision was made in error based on these facts, and the applicant was not issued a notice of intent to deny.[2] *Form I-290B*, at 2, received September 12, 2008.

The record reflects that the applicant procured a B-2 visitor's visa by misrepresenting his marital status and intent to return to Brazil, and thereafter used this visa to enter the United States to seek employment. Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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

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[1] The AAO notes that the field office director also found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) for accruing more than 180 days but less than one year of unlawful presence, departing the United States and seeking admission within three years of his departure. *Form I-485 Decision*, at 3, dated August 12, 2008. The AAO notes that the applicant is not inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act as he did not accrue the requisite period of unlawful presence prior to his departure from the United States. The AAO notes that unlawful presence starts when the Form I-94 expires, as opposed to the date that an applicant violates his status. However, if a status violation is found by U.S. Citizenship and Immigration Services (USCIS) while adjudicating a request for another immigration benefit, or an immigration judge in the course of proceedings, then unlawful presence accrues from the date USCIS or the immigration judge makes the finding.

[2] Contrary to counsel's assertions, the field office director was not required to issue a notice of intent to deny in this matter. In instances where there is clear evidence of ineligibility, a petition or application may be denied without the issuance of a request for evidence or notice of intent to deny. 8 C.F.R. § 103.2(b)(8). Further, even if the field office director had committed a procedural error by failing to issue a notice of intent to deny, it is not clear what remedy would be appropriate beyond the appeal process itself. The AAO notes that the applicant, on appeal, has not submitted additional evidence to establish a qualifying relative.

(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 [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.

The record does not reflect that the applicant has a U.S. citizen or lawful permanent resident spouse or parent. The applicant's Form G-325A, Biographic Information, indicates that his parents are residents of Brazil. His Form I-485, Application to Register Permanente Resident or Adjust Status, lists his spouse as one of the family members who is seeking adjustment with him. As the applicant does not have the qualifying relative required by section 212(i) of the Act, he is statutorily ineligible for a section 212(i) waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.