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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

#5

Date: **JUL 10 2012**

Office: HIALEAH, FL

FILE: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. As the applicant is not inadmissible, the waiver application is unnecessary. The appeal will be dismissed and the matter returned to the Field Office Director for continued processing.

The record reflects that 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 fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.¹ The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and child in the United States.

The field office director found that on October 6, 1993, the applicant attempted to enter the United States by presenting a counterfeit nonimmigrant visa and a counterfeit foil. The field office director also found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends the applicant established extreme hardship to his U.S. citizen spouse and that the field office director failed to consider all of the evidence, including a letter from a psychotherapist.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on December 10, 2008; several statements from the applicant; a letter from the applicant's mother; a letter from [REDACTED]; a letter from [REDACTED] mother; copies of bills, pay stubs, and other financial documents; and a psychological evaluation. The entire record was reviewed and considered in rendering this decision on appeal.

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

In general. 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.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence.

¹ The record reflects that on September 24, 1999, the applicant pled guilty to violation of Mass. Gen. Laws Ann. ch. 265, § 13A (assault or an assault and battery). The director did not address this conviction due to oversight or because the director believed that the crime was no more than simple assault. We have reviewed the record and believe, based on the records before us, that the applicant's conviction was no more than simple assault.

Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO concludes that the applicant has met the burden of proving that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. In this case, the record contains documentation that on October 6, 1993, 77 Brazilian nationals arrived at [REDACTED] with fraudulent visas. According to an immigration inspector's notes in the record, the quality of the visas were good, but the counterfoils were of very poor quality and obviously fake. The inspector found that it was probable that an organized travel agency conspiracy exists to produce the counterfeit visas. Significantly, the immigration inspector also states that the Brazilian nationals "seem ignorant" of the fact that they had purchased fraudulent visas. The record also contains the applicant's sworn statement taken on October 6, 1993, in which he stated that he did not know his visa was counterfeit. The record also shows that the applicant has consistently asserted that he had no knowledge he had presented a fraudulent visa, and that it was his father who retained the services of a travel agent for a vacation and handled all the costs involved, including the hotel, airline tickets, and consulate fees for acquisition of the visa. The applicant stated that he was 20 years old at the time. A letter from the applicant's mother corroborates the applicant's contention that her late husband and her son were victims of a scam and that, at the time, she and her husband never thought people could act with such dishonesty. In view of the applicant's age and experience at that time, it is plausible that he was unaware of the proper procedures for obtaining a valid visa from the consulate. The AAO also notes that the passport and visa that the applicant used were issued in his name and with his date of birth. We also point out that the director never addressed whether the fraud or misrepresentation was willful.

Under these unique circumstances, the evidence supports the applicant's assertion that he never willfully misrepresented a material fact or knowingly or intentionally perpetrated fraud. Accordingly, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to the Act need not be addressed. Consequently, the decision of the Field Office Director is withdrawn and the instant application for a waiver is declared unnecessary.

ORDER: As the applicant is not inadmissible, the waiver application is unnecessary and the appeal is dismissed. The matter will be returned to the Field Office Director for further processing.