



U.S. Citizenship
and Immigration
Services

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DATE: Office: PHILADELPHIA, PA



IN RE: JUN 08 2012 [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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal as the waiver application is unnecessary.

The applicant 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 presenting a fraudulent Form I-551 permanent resident card and social security card to employers to obtain employment. 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 U.S. citizen spouse and child.

The field office director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 19, 2010.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for presenting a false social security card and alien registration card to a private employer and, alternately, that his spouse would experience extreme hardship if he was removed to Mexico. *Brief in Support of Appeal*, dated May 3, 2010.

The record includes, but is not limited to, counsel's brief and documentation submitted with the applicant's Form I-601. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) 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.

(ii) Falsely Claiming Citizenship

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law 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 reflects that the applicant presented a fraudulent Form I-551, Resident Alien Card, and social security card to private employers in Harrisburg, Pennsylvania (Temporary Services and Cumberland Distribution) to obtain employment. Upon review of the record, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he does not require a waiver under section 212(i) of the Act.¹

On April 30, 1991, the General Counsel of the legacy Immigration and Naturalization Service (INS) published a legal opinion on the issue of whether an applicant who presents counterfeit documents in completing an Employment Eligibility Verification Form (Form I-9) is subject to inadmissibility for misrepresentation under former section 212(a)(19) (now section 212(a)(6)(C)(i)) of the Act. The legal opinion provides:

For two reasons, we conclude that an alien's false statements on Form I-9 do not render the alien subject to exclusion under Section 212(a)(19) of the Act. First, an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits. Secondly, while the decision of the Service to grant an alien authority to accept employment is a benefit under the INA, an employer's decision to hire any particular individual involves a private employment contract. Thus, false statements on the Form I-9 are not for the purpose of obtaining a benefit under the INA and, therefore, cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.

Genco Op., Paul W. Virtue, Act. Gen. Co., *Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9)*, No. 91-39, 2 (April 30, 1991).

Similarly, the Board of Immigration Appeals (BIA) concurring opinion in *Matter of Cervantes-Gonzalez* noted:

The majority's language may be misinterpreted as suggesting that using the

¹ The applicant also presented the documents to obtain a credit card and a house. There is no evidence that he was convicted of any crimes related to fraud or that he admitted the essential elements of a fraud-related crime.

fraudulent passport to obtain employment is obtaining a benefit under the Act. Although the use or possession of such document is punishable under section 274C of the Act, 8 U.S.C. § 1324c (1994 & Supp. II 1996), working in the United States is not 'a benefit provided under this Act,' and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

22 I&N Dec. 560, 571 (BIA 1999)(citations omitted).

The United States Courts of Appeals for the Tenth and Eighth Circuits have concluded that employment can be properly deemed a "purpose or benefit under the Act" in the context of applying section 212(a)(6)(C)(ii) of the Act. Specifically, when an applicant has made a false claim of U.S. citizenship for the purpose of obtaining employment with a private employer, he may properly be deemed inadmissible under section 212(a)(6)(C)(ii) of the Act. *Rogriguez v. Mukasey*, 519 F.3d 773, 777 (8th Cir. 2008)(stating that "the explicit reference to [U.S.C.] § 1324a [section 274A of the Act] in [U.S.C.] § 1182(a)(6)(C)(ii)(I) [section 212(a)(6)(C)(ii)(I) of the Act] indicates that private employment is a purpose or benefit of the Act."); *Kechkar v. Gonzales*, 500 F.3d 1080, 1084 (10th 2007)(finding that "[i]t appears self-evident that an alien who misrepresents citizenship to obtain private employment does so, at the very least, for the purpose of evading § 1324a(a)(1)(A)'s prohibition on a person or other entity knowingly hiring aliens who are not authorized to work in this country.").

However, these decisions are limited to an analysis of the application of section 212(a)(6)(C)(ii) of the Act, and the conclusions are based on the reference to section 274A of the Act found in section 212(a)(6)(C)(ii) of the Act. Section 274A of the Act renders it unlawful for an employer to hire an alien without authorization from United States Citizenship and Immigration Services (USCIS), thus section 212(a)(6)(C)(ii) of the Act specifically contemplates false claims of U.S. citizenship for the purpose of employment in the United States. Section 212(a)(6)(C)(i) of the Act is more limited in scope than section 212(a)(6)(C)(ii) of the Act, as it does not reference section 274A of the Act and does not reach false representations made for purposes or benefits under other Federal or State laws. See section 212(a)(6)(C)(ii) of the Act. Thus, the finding of the BIA and Federal courts that employment is a "purpose or benefit under the Act" in the context of the application of section 212(a)(6)(C)(ii) of the Act does not constitute a finding that employment is also a "benefit under the Act" as contemplated by section 212(a)(6)(C)(i) of the Act.

Based on the foregoing, the AAO finds that the April 30, 1991 legal opinion of legacy INS General Counsel and the concurring opinion of the BIA in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 571, continue to serve as current guidance for the application of section 212(a)(6)(C)(i) of the Act.

In the present matter, the applicant presented a fraudulent lawful permanent resident card and social security card to private employers, not a U.S. government official authorized to grant visas or other immigration benefits. He did so for the purpose of obtaining employment, which has not been determined to be a "benefit provided under [the] Act" as contemplated by section 212(a)(6)(C)(i) of the Act. Therefore, the record fails to establish that the applicant is inadmissible under

212(a)(6)(C)(i) of the Act. *See Matter of Y-G*, 20 I&N Dec. 794, 797-98 (BIA 1994)(finding that an individual did not commit fraud or misrepresentation as contemplated by section 212(a)(6)(C)(i) of the Act because he voluntarily revealed that he possessed fraudulent travel documents upon first encountering U.S. immigration officers); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 571. The applicant has not made a false claim of U.S. citizenship, thus he is not inadmissible under section 212(a)(6)(C)(ii) of the Act. Accordingly, the applicant is not inadmissible and the field office director's findings regarding a misrepresentation under section 212(a)(6)(C)(i) of the Act are withdrawn. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

ORDER: The applicant's waiver application is unnecessary and the appeal is dismissed.