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

**U.S. Citizenship and Immigration Services**

**PUBLIC COPY**

[redacted]

H5

Date: MAY 17 2012 Office: VIENNA, AUSTRIA FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action.

The record reflects that the applicant is a native and citizen of Macedonia (formerly Yugoslavia) who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is the son of U.S. citizens and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his parents and siblings in the United States.

The field office director found that in 1995, the applicant entered the United States without inspection, was ordered deported and departed the United States in 1997, then subsequently attempted to reenter the United States with a fraudulent green card. The field office director states that sources from the Department of State have confirmed that the applicant not only presented a fraudulent green card to facilitate travel to the United States, but also appeared at the U.S. Embassy in Sofia, Bulgaria, on April 21, 1997, and presented a fraudulent green card for identification purposes. *Decision of the Field Office Director*, dated December 17, 2009.

On appeal, counsel contends the applicant is not inadmissible because he has not misrepresented a material fact in order to procure an immigration benefit. Specifically, counsel contends the applicant has never made any attempt to enter the United States after he returned to Macedonia. Counsel cites several documents in the record, including the record of proceedings before an immigration judge as well as a letter from a district director, to support his contention that the applicant is not inadmissible.

The record contains, *inter alia*: statements from the applicant's parents, sister, and other relatives; a letter from the applicant's parents' physician; copies of medical records; copies of tax records; and an approved Petition for Alien Relative (Form I-130) filed by the applicant's sister. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) 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.

In this case, the record shows that the applicant arrived in the United States in Chicago on a Swiss Air flight on August 23, 1995. *Notice to Detain, Deport, Remove or Present Aliens (Form I-259)*, dated August 23, 1995; *Chicago District, Exclusion Case Summary Report (Form I-122)*, dated August 23, 1995; *Letter from Joseph R. Greene, District Director*, dated October 4, 1995. The record further shows that the applicant presented a Yugoslavian passport and was referred to

secondary inspection for not having a visa. *Form I-122, supra*; *Letter from* [redacted], *supra*. The applicant filed an application for asylum and was detained by immigration authorities while his application was pending. An immigration judge denied his asylum application on December 1, 1995, which was upheld by the Board of Immigration Appeals on June 19, 1996. The record shows that the applicant remained in custody until his removal on October 24, 1997. *Notice to Alien Ordered Removed/Departure Verification (Form I-296)*, dated October 24, 1997. The record further shows that during the applicant's detention of more than two years, there were numerous unsuccessful attempts to have the applicant released from custody.

Furthermore, the record shows that the applicant's sister had filed a Form I-130 on the applicant's behalf, which was approved on March 1, 1996. When a visa became available more than ten years later, the applicant appeared for his visa interview at the U.S. embassy in Macedonia where it appears he was instructed to file a Form I-601. This Form I-601 was denied by the field office director on September 29, 2008. *Decision of the Field Office Director*, dated September 29, 2008. According to the field office director, the applicant entered the United States in 1995 without inspection, was deported, and then subsequently attempted to reenter the United States with a fraudulent green card. *Id.* The field office director contends that this finding was confirmed by the U.S. embassy in Macedonia. *Id.* The applicant appealed this decision, which was rejected by the field office director as untimely filed. *Decision of the Field Office Director*, dated November 17, 2008. The applicant filed a second Form I-601, which was again denied by the field office director on December 17, 2009. *Decision of the Field Office Director*, dated December 17, 2009. In this decision, the field office director made the same conclusions that the applicant entered the United States in 1995 without inspection, was deported, and then subsequently attempted to reenter the United States with a fraudulent green card. *Id.* In this second decision, however, the field office director also states that sources from the Department of State have confirmed that the applicant not only presented a fraudulent green card to facilitate travel to the United States, but also appeared at the U.S. Embassy in Sofia, Bulgaria, on April 21, 1997, and presented a fraudulent green card for identification purposes. *Id.* The instant appeal followed.

After a careful review of the record, the AAO remands the matter to the field office director as there is insufficient documentation in the record to substantiate the applicant's inadmissibility.

As an initial matter, the record clearly shows that when the applicant entered the United States in 1995, he presented a valid Yugoslavian passport and applied for admission to the United States based on a claim of fearing for his life in Bosnia. *Form I-122, supra*; *Letter from* [redacted] *supra*. Therefore, the field office director's finding that the applicant entered the United States without inspection in 1995 is erroneous. Regarding the field office director's finding that the applicant is inadmissible for attempting to enter the United States with a fraudulent green card after he had been deported, the only evidence in the record to substantiate this claim consists of a cable from what appears to be the U.S. embassy in Sofia, Bulgaria, and notes from the U.S. embassy in Macedonia, dated February 15, 2008. However, neither the cable nor the consular notes provide any details regarding when, where, or how the applicant purportedly attempted to use a fraudulent green card. The record does not contain a copy of the purported fraudulent green card and the applicant

has consistently denied ever making any attempt to enter the United States after his deportation. In addition, although the consular notes indicate that the applicant's attorney stated that the applicant paid an alien smuggler in 1997 and had been unaware the smuggler used a fraudulent green card on his behalf, a review of counsel's statement in the record shows that embassy staff misinterpreted counsel's assertion. Counsel stated that the applicant "denies that he ever used a 'fraudulent green card' and insists that his only 'fault' was that he paid a person to help him board the airplane." *Memorandum in Support of Application for Waiver of Grounds of Inadmissibility (Form I-601)* at 2. There is no statement by counsel in the record conceding that the applicant ever paid an alien smuggler in 1997. Without any specifics regarding the applicant's alleged attempted entry into the United States using a fraudulent green card, the AAO finds that there is insufficient evidence in the record to support a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

With respect to the field office director's finding that the applicant presented a fraudulent green card for identification purposes when he appeared at the U.S. Embassy in Bulgaria on April 21, 1997, the record clearly shows that the applicant remained in detention in Colorado at that time. It is simply not possible that the applicant presented a fraudulent green card in Bulgaria when he was in custody in Colorado.

Therefore, the AAO remands the matter to the field office director to evaluate whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. Specifically, the field office director should issue a new decision providing details of the applicant's 1997 attempt to enter the United States using a fraudulent green card. The new decision is to be certified to the AAO and the applicant shall be given thirty days in which to respond to the new decision.

**ORDER:** The matter is remanded to the field office director for further proceedings consistent with this decision.