identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: SEP 1 0 2012 OFFICE: BALTIMORE, MD 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:

[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 in accordance with the instructions on 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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director for further action consistent with this decision.

The applicant is a native and citizen of Rwanda who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse.

The District Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated December 15, 2010.

On appeal, counsel for the applicant contends that the applicant did not possess the subjective intent to misrepresent a material fact when discussing his monthly pay, and even if he is found to have done so, his timely retraction serves to purge the misrepresentation as a ground of inadmissibility. Counsel asserts that if he is found to be inadmissible, the applicant's spouse would experience financial and emotional hardship upon separation. Counsel also states that the spouse would experience extreme hardship upon relocation to Rwanda given the country conditions, her employment and family ties, and her medical needs.

The record includes, but is not limited to, statements from the applicant and his spouse, financial, educational, and medical documents, letters from family and friends, photographs, other applications and petitions filed on behalf of the applicant, and evidence of birth, marriage, divorce, residence, and citizenship. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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:

> (1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the record reflects that in an application for a B-1 nonimmigrant visa, the applicant claimed he wished to visit the United States temporarily so he could attend a tennis academy in Texas. In support, he stated that the [redacted] in Rwanda paid him $500 monthly. The [redacted] representative indicated that the applicant was not paid monthly but was issued a one-time payment of $500. The visa was issued, and the applicant was admitted to the United States on September 28, 2007. USCIS records indicate on or about October 25, 2007, the applicant's visa was revoked because he had left the United States and gone to Canada. There is nothing in the record to confirm the departure to Canada.

Counsel contests that the applicant did not go to Canada, stating that since September 28, 2007 the applicant has resided in the United States. Counsel also asserts that the applicant did not make a material misrepresentation because his response on his monthly salary was due to a misunderstanding and language barriers, and that even if he did make a material misrepresentation, he retracted those statements in a timely fashion.

On the applicant's Form G-325A Biographic Information, a barely legible notation, apparently made at the applicant's adjustment interview, indicates that he lived in Texas, the site of the tennis camp, from September 2007 to December 2007. These dates correspond to the validity of his visa and would appear to indicate that he attended the tennis camp as required, thus complying with the terms of the visa. While there does seem to be some conflicting information as to whether the applicant stated he was being paid by the [redacted] of Rwanda or received a one-time payment for playing in a tournament, the consular officer did not seem to find this to be a major issue as the visa was ultimately issued. The reason given for the revocation of the visa is that the applicant deserted for Canada rather than fulfilling the purpose of the visa. There is nothing in the record to indicate where this information came from and it conflicts with the testimony the applicant gave at the adjustment interview.

Counsel contends that the applicant never went to Canada. However, even if he did, if he complied with the terms of his visa, as the record indicates, that visit would have no bearing on whether he misrepresented anything related to the application for the visa or his intent in obtaining the visa.

In the Director's denial letter the finding of misrepresentation and inadmissibility under section 212(a)(6)(C)(i) of the Act is noted as the applicant's failure to fulfill the purpose of his visa. As this finding appears to conflict with the notes taken during the adjustment interview, the matter is remanded to the Director to review the record and take any actions necessary to make a determination as to which information is correct. Once this has been resolved, the Director shall issue a new decision on the applicant's inadmissibility. If that decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The appeal is remanded to the Director for action consistent with the discussion above.