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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

SEP 09 2009

FILE: [redacted] Office: HARTFORD Date:
MSC-06-066-11630

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Inadmissibility pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility within the legalization program was denied by the director of the Hartford office, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted Form I-690, Application for Waiver of Grounds Inadmissibility concurrently with the Form I-687 Application for Status as a Temporary Resident. The director denied the waiver, as the applicant did not describe any family unity, humanitarian, or public interest reasons for granting a waiver.

On appeal, counsel for the applicant states that for humanitarian reasons and reasons of family unity the waiver should be approved. Specifically, the applicant states that he would like to live in the United States with his wife. The applicant asserts that he and his wife would suffer extreme hardship if he were forced to leave the United States.

Preliminarily, the AAO notes that on the Form I-690 the applicant stated that there was misrepresentation of a material fact regarding the applicant's initial I-687 application, filed in 1990 to establish his CSS class membership. The record establishes that the applicant admitted that several fraudulent stamps were placed in his passport, evidencing travel outside of the United States in 1986, by an agency preparing his initial application in order to establish the applicant's eligibility for CSS class membership. The director determined the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The AAO concurs in the director's determination that the applicant is inadmissible.

An applicant applying for adjustment to temporary resident status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

The record contains a Form I-687, Application for Status as a Temporary Resident, which was filed on the same date as the waiver application. The record reflects that the director denied the Form I-687 application because the applicant had not demonstrated his continuous residence in the United States in an unlawful status since prior to January 1, 1982. The AAO dismissed a subsequent appeal. Consequently, the applicant's claim of residence in this country since 1981 is without merit.

Any alien who, by fraud or willful misrepresentation of a material fact, seeks to procure (or has sought to procure, or has procured) a visa, or other documentation, or admission into the United States or other immigration benefit, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i) permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(C)(i) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." 8 C.F.R. § 245a.2(k)(2).

The applicant is a native of Jamaica, and a naturalized citizen of the United Kingdom. At his interview in support of his Form I-687 application, the applicant did not submit documentation indicating the immigration status of his wife, although the applicant's marriage certificate reveals that his wife was born in Jamaica. On appeal, the applicant asserts that he would suffer extreme hardship if he were forced to leave the United States because he asserts he would be unable to find work due to the fact that he is sixty-seven years old. The applicant states that he would be doomed to poverty if he were forced to return to Jamaica. Without independent evidence to corroborate the applicant's claims, the applicant's statements cannot be considered as persuasive. To meet his or her burden of proof an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6).

By his admission, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact in order to obtain an immigration benefit. The applicant has not submitted evidence to demonstrate that such ground of inadmissibility should be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient documentation to establish by a preponderance of the evidence that the Form I-690 waiver application should be approved. *See*, 8 C.F.R. § 245a.2(d)(5 and *Matter of E- M-*, 20 I&N Dec. at 77.

Consequently, the applicant has failed to demonstrate that the applicable ground of inadmissibility should be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest pursuant to 8 C.F.R § 245a.2(k)(2). After a careful review of the record it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.[1]

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

[1]Additionally, as stated above, under the provisions of section 245A of the Act, the applicant has the burden of proving by a preponderance of the evidence not only that he is admissible to the United States but that he has resided in the United States for the requisite period and is otherwise eligible for adjustment of status. Therefore, since the applicant has been found to be ineligible for temporary resident status because he has failed to establish continuous residence for the requisite period, the issue of the applicant's admissibility which forms the basis of the waiver application is moot.