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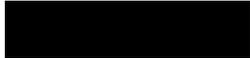
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK (CHERRY HILL), NJ

Date: **SEP 28 2005**

IN RE:



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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark (Cherry Hill), New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure permanent resident status in the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 19, 2004.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship and the district director did not properly weigh the evidence in light of current case law. *See Form I-290B Attachment*, dated April 8, 2004.

The record contains a psychologist's letter for the applicant's spouse, a doctor's letter for the applicant's older child, the applicant's immigration documents and a letter from counsel. The entire record was reviewed and considered in arriving at a decision on the appeal.

The district director's notice of intent to deny states:

On January 3, 2002 you entered the Immigration office at Cherry Hill, New Jersey to file an Application to Register Permanent Residence or Adjust Status. At the time you filed that Application you presented your passport which contained an altered nonimmigrant visitor's visa in an attempt to extend the validity of the visa. *Notice of Intent to Deny*, dated October 9, 2003.

The applicant's B-2 visitor visa was validly issued on April 18, 2000 and includes a handwritten, altered expiration date of July 17, 2003. The applicant's Form I-94 Departure Card indicates that the applicant lawfully entered the United States as a B-2 visitor on April 25, 2000 and was permitted to remain in the United States until October 25, 2000. There is no indication that the applicant filed for an extension of status.

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

- (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.

Counsel asserts that the applicant entered the United States with a valid, unaltered passport and visa, altered the visa while in the United States and never used the altered visa for any immigration benefit. *Letter in Support of Appeal*, at 1, dated August 4, 2003.

The issue is whether the applicant sought to procure lawful permanent residence through fraud (which requires a false representation of a material fact according to the Department of State Foreign Affairs Manual (FAM), 9 § 40.63 N3) or by willfully misrepresenting a material fact.

FAM, 9 § 40.63 N6 states, in pertinent part:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

The issue in this case is whether the applicant is inadmissible, however, the AAO finds the FAM definition of "material" persuasive in analyzing the applicant's case.

The first question is whether the applicant would be inadmissible on the true facts. The actual expiration date of the visa appears to be July 17, 2000. *See Applicant's Visitor Visa*, dated April 18, 2000. Based on the true facts, the applicant would not be inadmissible. The AAO notes that there is no legal requirement that the applicant's visa remain unexpired in order to adjust status. In addition, the applicant's visa expiration while in the United States is not related to maintenance of lawful status in the United States. Furthermore, as the applicant is the spouse of a U.S. citizen and was inspected and admitted, the applicant is not required to maintain lawful status in order to adjust status. *See 8 C.F.R. §245.1.*

The second question is whether the misrepresentation shut off a line of inquiry which is relevant to the applicant's eligibility and which might well have resulted in a proper determination that he be found inadmissible. The applicant's passport alteration did not shut off a line of inquiry, rather it opened up a line of inquiry which is irrelevant to the applicant's eligibility and which resulted in an incorrect finding of inadmissibility.

Based on the record, the AAO finds that the applicant did not commit fraud or misrepresent a material fact and is not inadmissible under section 212(a)(6)(C) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.