



U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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MAY 21 2007

FILE: [Redacted] Office: ROME Date:

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:



PHOTOCOPY

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director (district director), Rome, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of the Czech Republic 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter 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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 17, 2005.

On appeal, counsel for the applicant contends that expedited removal was wrongfully used to remove the applicant in 2001, and that the district director failed to recognize this fact. *Brief in Support of Appeal*, dated August 16, 2005. Counsel further contends that the district director erroneously indicated that the applicant was removed by expedited removal in 2004, when in fact he was permitted to withdraw his application for admission. *Id.* at 7. Counsel asserts that "[s]ince the [applicant] did not receive expedited removal in 2004 as claimed by the Rome CIS office, and since the [applicant] was wrongfully placed into expedited removal in 2001 when the [applicant] should have had a hearing before an Immigration Judge pursuant to 8 C.F.R. 235.3(b)(3), the [applicant] should not have been required to file any waivers" *Id.* at 9.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible.

The record reflects that the applicant first entered the United States in 1993 in B-2 status with permission to remain for six months. The applicant remained in the United States beyond his permitted period, and was

granted voluntary departure until April 24, 1996. The applicant left the United States on April 23, 1996, within the voluntary departure period.

The applicant's mother married a U.S. citizen and became a permanent resident. The applicant obtained a new B-1/B-2 visa on April 6, 1999 in order to travel to the United States to visit his mother. The applicant entered the United States as a B-2 visitor for pleasure on May 15, 1999, with permission to remain until November 14, 1999. However, he departed the United States on May 30, 2000, six months and 16 days after his B-2 status expired.

On August 31, 2001, the applicant applied for entry to the United States in B-2 status at the Chicago O'Hare International Airport. However, he was placed in expedited removal and removed from the United States on the same day, as inspecting officers determined that he was an intending immigrant and not eligible for B status. The record contains a Form I-860, Notice and Order of Expedited Removal, that notes that the applicant was inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Act, and states the following: "At the time of [the applicant's] application for admission to the United States [he was] not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act." The documentation in connection with the applicant's expedited removal does not indicate why he was found in violation of section 212(a)(6)(C)(i) of the Act.

It is noted that inspecting officers issued a Form I-296, Notice to Alien Ordered Removed/Departure Verification, indicating that the applicant was barred from reentering the United States for a period of ten years "as a consequence of having been ordered removed under any section of the Act other than section 235(b)(1) or 240 [of the Act]." However, this indication was in error, as the applicant was only ordered removed under section 235(b)(1) of the Act. Accordingly, he was only subject to a bar to admission to the United States for a period of five years. Section 212(a)(9) of the Act.

The applicant's mother became a naturalized United States citizen in 2002, and she filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. The petition was approved, and on August 18, 2004, the U.S. Embassy in Prague issued an Immigrant Visa to the applicant.

On September 15, 2004, the applicant applied for admission to the United States at the Newark Liberty International Airport. Inspecting officers determined that the applicant was still barred from entering the United States, as five years had not passed since his expedited removal on August 31, 2001. The applicant was permitted to withdraw his application for admission pursuant to a Form I-275, and he left the United States.

On or about October 12, 2004, the applicant filed the present Form I-601 Application for Waiver of Grounds of Inadmissibility. On June 17, 2005, the district director denied the application. Regarding the applicant's inadmissibility, the district director stated the following:

In 2001, the applicant attempted to enter the United States again on his B1/B2 tourist visa, which had an expiration date of 2009. He was, however, expeditiously removed, as it was determined that he was an intending immigrant, not a tourist. He had therefore obtained a tourist visa by misrepresentation, invoking inadmissibility under section 212(a)(6)(C)(i) for fraud/misrepresentation.

Decision of the District Director, dated June 17, 2005.

Upon review, the record does not support that the applicant is inadmissible to the United States, such that he requires the present Form I-601 application for a waiver.

From approximately 1993 to 1996, the applicant remained in the United States beyond his approved stay in B-2 status. He ultimately departed the country pursuant to an order of voluntary departure, thus he was not deported. The present unlawful presence provisions under section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), were not enacted until April 1, 1997, thus the applicant did not accrue unlawful presence during this period that may give rise to inadmissibility.

The applicant entered the United States as a B-2 visitor for pleasure on May 15, 1999, with permission to remain until November 14, 1999. However, he departed the United States on May 30, 2000, 198 days after his B-2 status expired. Accordingly, pursuant to section 212(a)(9)(B)(i)(I) of the Act, from May 30, 2000, the applicant was barred from entering the United States for three years, until May 30, 2003. The applicant attempted to reenter the United States on August 31, 2001. Yet, as discussed above, he was refused entry and removed through the expedited removal process. The record does not reflect that he entered the United States at any time between his departure on May 30, 2000 and May 29, 2003. Thus, on May 30, 2003, the applicant ceased to be inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, and he does not require a waiver on this basis.

On August 31, 2001, upon the applicant's attempted entry to the United States, inspecting officers determined that he was an intending immigrant, ostensibly due to the fact that the applicant's mother resided in the United States and the applicant admitted to previously overstaying his B-2 status on two occasions. As the only entry document the applicant presented was a nonimmigrant B-1/B-2 visa, which does not allow an intent to enter the United States as an immigrant, the applicant was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Act as an individual "not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act." Section 212(a)(7)(A)(i)(I) of the Act.

The applicant was further found inadmissible under section 212(a)(6)(C)(i) of the Act. As quoted above, section 212(a)(6)(C)(i) of the Act states that "[a]ny 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(a)(6)(C)(i) of the Act. However, the record contains no indication from inspecting officers regarding why the applicant was found to have committed fraud or misrepresentation.

The record contains a Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, that documents testimony the applicant provided under oath regarding his attempting entry on August 31, 2001. In the statement, the applicant indicated that he was born in Prague, he is a citizen of the Czech Republic, and his permanent address is in Trutnov, Czech Republic. *Form I-867A*, dated August 31, 2001. When asked the purpose of his visit, the applicant stated: "I just wanted to visit my mom, she invited me. She called me on Monday and asked me if I wanted to visit her. I said yes and on Tuesday she called and she said she had the tickets." *Id.* at 2. The applicant freely admitted that he had visited the United States on two previous occasions, and that he overstayed his approved period each time. *Id.* He stated that he came to the

United States in 1993 because his mother got married in the United States. *Id.* He stated that he held a driver's license in Oregon, and that he had not worked in the United States. *Id.* at 2. It is noted that the applicant reported that he has a disability, and as a result he does not perform work and subsists on contributions from his family and the government of the Czech Republic. *Id.*

In denying the present application, the district director stated that the applicant "had . . . obtained a tourist visa by misrepresentation, invoking inadmissibility under section 212(a)(6)(C)(i) for fraud/misrepresentation." *Decision of the District Director* at 2. However, the record contains no documentation to support that inspecting officers determined that the applicant had committed fraud or misrepresentation when applying for a B-1/B-2 visa. In fact, inspecting officers declined to state any basis for finding the applicant subject to section 212(a)(6)(C)(i) of the Act.

Further, the record lacks sufficient evidence to support an independent finding that the applicant committed fraud or misrepresentation when he applied for a B-1/B-2 visa. It is noted that the record does not contain documentation in connection with the applicant's B-1/B-2 visa application, such as an application form or officer interview notes. Thus, Citizenship and Immigration Services (CIS) lacks direct evidence of the representations the applicant made when applying for the visa.

The applicant received the B-1/B-2 visa he presented in 2001 on April 6, 1999. After he received the visa, he entered the United States on May 15, 1999. Though he remained in the United States for approximately six months beyond his approved six month period of stay, he departed on his own accord on May 30, 2000. He did not attempt to return to the United States until August 31, 2001, approximately 15 months after his departure. The fact that the applicant entered the United States shortly after he obtained his B-1/B-2 visa and then departed by his own volition for a lengthy period supports that he did not intend to permanently immigrate to the United States at the time he applied for his B-1/B-2 visa. These entry and exit dates do not suggest that the applicant falsely represented to U.S Embassy staff that he intended to enter the United States for a temporary period as permitted in B status, as he in fact did depart the United States after a one year sojourn.

Further, the statements the applicant made in the course of his interview on August 31, 2001 support that he did not intend to immigrate to the United States at the time he applied for his B-1/B-2 visa. Specifically, he named a permanent address in the Czech Republic, he noted his father is a Czech citizen who resides in the Czech Republic, and he reported that his mother called him on short notice to ask if he wished to come for a visit to the United States. At no time did the applicant indicate that he wished or intended to immigrate to the United States until he had already been issued an Immigrant Visa. *Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated September 14, 2004.

For the above-discussed reasons, the record does not reflect that on August 31, 2001 the applicant falsely represented that he intended to enter the United States temporarily in B-2 status, when he in fact intended to immigrate. The record shows that the applicant freely answered the questions asked during inspection. The fact that the applicant was deemed ineligible to enter pursuant to his B visa does not reflect that he made an affirmative misrepresentation or that he committed fraud. Individuals are free to apply for any immigration benefit for which they feel they may be eligible. The fact that they are ultimately deemed ineligible for a benefit, by itself, does not render their applications fraudulent or reflect that they committed misrepresentation.

Thus, the record does not support a finding that the applicant committed fraud or misrepresentation at any time, such that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

Due to being found inadmissible under section 212(a)(7)(A)(i)(I) of the Act, the applicant was removed from the United States through the expedited removal process on August 31, 2001. This removal was pursuant to section 235(b)(1) of the Act, thus the applicant was subject to a bar to admission to the United States for a period of five years, until August 30, 2006. Section 212(a)(9) of the Act. The applicant filed a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, in order to overcome the five-year bar under section 212(a)(9) of the Act. However, as five years have passed since the applicant was removed on August 31, 2001, he is no longer inadmissible under section 212(a)(9) of the Act. Counsel contends that the applicant should not have been removed through expedited removal, suggesting that he should not have been subject to a bar to admission under section 212(a)(9) of the Act. Yet, as the applicant is no longer inadmissible under section 212(a)(9) of the Act, the AAO need not address this further.

The applicant attempted to enter the United States on September 15, 2004 pursuant to his Immigrant Visa. However, inspecting officers determined that he was still subject to the five-year bar under section 212(a)(9) of the Act. The applicant was permitted to withdraw his application for admission pursuant to a Form I-275, and he left the United States. Accordingly, the applicant was not subject to any grounds of inadmissibility due to this attempted entry.

Based on the foregoing, the applicant is not inadmissible to the United States under any provisions of the Act. Accordingly, he does not require a waiver of a ground of inadmissibility, and the present Form I-601 application is moot. The decision of the district director will be withdrawn, the Form I-601 application will be declared moot, and the appeal will be sustained.

ORDER: The decision of the district director is withdrawn, the Form I-601 application is declared moot, and the appeal is sustained.