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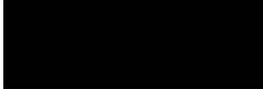
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MILWAUKEE, WISCONSIN Date: SEP 02 2008

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 PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Milwaukee, Wisconsin, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the Acting District Director's decision will be withdrawn, and the waiver application declared moot.

The record reflects that the applicant is a native and citizen of Pakistan. He was found to be inadmissible to the United States pursuant to 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 an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the derivative beneficiary of an approved Immigrant Petition for Alien Worker (I-140) filed on behalf of the applicant's wife. He 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 and reside with his Lawful Permanent Resident spouse.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of Acting District Director* dated May 15, 2006.

The record reflects that in September 1985 the applicant entered the United States without inspection and in May 1988 he filed an application with the Immigration and Naturalization Service (now known as Citizenship and Immigration Services (CIS)), for legalization as a Special Agricultural Worker. The applicant's legalization application was denied and an appeal of the denial was dismissed on November 13, 1992. In September 2002, the applicant filed an application for adjustment of status together with an application for waiver of inadmissibility (I-601). The waiver application states that he had misrepresented a material fact on his legalization application and was not eligible for benefits as a Special Agricultural Worker pursuant to Section 210 of the Act. Based on these statements the Acting District Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The applicant was also convicted of Petit Theft in Orange County, Florida on October 8, 1997. This offense does not render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a crime involving moral turpitude because the maximum sentence of imprisonment is 60 days and it therefore falls under the exception in section 212(a)(2)(A)(ii)(II) of the Act. *See Florida Statutes Annotated* §§ 812.014(3)(a) and 775.082(4)(b).

On appeal, counsel asserts that CIS failed to correctly assess extreme hardship to the applicant's Lawful Permanent Resident spouse. In support of the appeal counsel submitted a brief and an affidavit from the applicant.

The AAO finds that the Acting District Director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on information provided in the applicant's Special Agricultural Worker application.

Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6) – Special agricultural workers, provides in pertinent part:

6) Confidentiality of information

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may -

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(7) Penalties for false statements in applications.-

(A) Criminal penalty.-Whoever-

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent

statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or,

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.-An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except on his application for special agricultural worker status. In addition, the applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the acting district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed, the acting district director's decision is withdrawn and the waiver application declared moot.