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U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: CHICAGO, IL

Date: APR 03 2009

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 PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 55-year old native of Ghana and citizen of Canada. He was found to be inadmissible to the United States under sections 212(a)(6)(C) and (h) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C) and (h). The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) and presently seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), so that he may adjust his status to lawful permanent resident of the United States.

The applicant was found to be inadmissible based upon his entry into the United States from Canada in 1995 through misrepresentation. The record indicates that the applicant was apprehended after crossing the Canadian border as a visitor accompanied by two of his children. The district director found the applicant inadmissible on the basis of his fraudulent entry into the United States. The director further found that the applicant was an alien convicted of a crime involving moral turpitude. Upon determining that the applicant failed to prove extreme hardship, the director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility).

On appeal, the applicant, through counsel, claims that his departure from the United States “will present severe hardship to his two children . . . and their mother who is a US citizen.” *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant further contends that his departure would cause him hardship. *See* Applicant’s Brief in Support of Appeal. The applicant’s appeal is accompanied by his daughters’ birth certificates.

Section 212(a)(2)(A) of the Act states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
 - (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that –

- (i) ... the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

In general.—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, 8 U.S.C. § 1182(i), provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . .

The record does not contain any documentary evidence of a criminal conviction as charged by the director. As such, the AAO cannot affirm the director's inadmissibility finding under section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2). Nevertheless, the record reflects, and the applicant does not dispute, that he attempted to enter the United States through misrepresentation in 1995. The record establishes that the applicant crossed the U.S./Canadian border with Canadian documents for himself and his children. He indicated to the inspector that he was coming to the United States for a brief period to do some shopping. He was later apprehended and given voluntary return to Canada when it was determined that his true purpose in coming to the United States was to travel to New York and board a plane to Ghana with his children, contrary to the custody agreement with his ex-wife. Had the inspector known the true purpose of his trip his admission would have been denied. His misrepresentation is, therefore, material and the applicant is inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).

Having found that the applicant is inadmissible under 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), the AAO must now address whether the applicant is eligible for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i). A waiver under this section is available to an applicant who “is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence.” The applicant does not have a U.S. citizen or lawful permanent resident spouse or parent. The applicant’s daughters, who are not qualifying family members, are Canadian citizens, and their mother, who according to the applicant is a U.S. citizen, is not the applicant’s spouse as they are divorced. Therefore, the applicant is ineligible for a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.