



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date:

AUG 12 2009

IN RE:

[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:

[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, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident 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 with his mother.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 13, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a statements from the applicant; a statement from the applicant's mother; a medical letter for the applicant's mother; employment letters for the applicant; bank statements; a loan statement; W-2 Forms for the applicant; tax statements for the applicant; earnings statements for the applicant; police clearance letters for the applicant; a school certificate; and statements from friends. The entire record was reviewed and considered in rendering this decision.

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(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on March 25, 1992, legacy Immigration and Naturalization Service (INS) determined that the qualifying marriage upon which the applicant's permanent resident status was based, i.e., his marriage to [REDACTED] was entered into solely for the purpose of procuring an alien's entry as an immigrant. *Termination of Conditional Residence Status*, dated March 25, 1992; *See also Memorandum Investigation*, dated October 7, 1991; *Report of Investigation*, dated October 17, 1991; *Witness Affidavits*, dated October 8, 1991. The applicant's conditional permanent resident status was subsequently terminated. *Termination of Conditional Residence Status*, dated March 25, 1992. In her brief, counsel asserts that the applicant felt pressured to falsely admit the allegations leveled against him after being threatened with deportation to his native country of Nicaragua, which at the time was still in the throes of civil conflict. *Attorney's brief*, dated January 19, 2006. The applicant also states that he felt pressure to admit that he had paid money to his ex-spouse in exchange for help with his immigration case. *Statement from the applicant*, dated January 9, 2006. While the AAO acknowledges these assertions, it notes that counsel and the applicant make these statements approximately 14 years after the termination of the applicant's status. Furthermore, on March 5, 1992 the applicant was issued a Notice of Intent to Terminate Conditional Residence Status in which he was accorded 15 days to submit evidence in rebuttal to the stated grounds for termination of his conditional residence. *Notice of Intent to Terminate Conditional Residence Status*, dated March 5, 1992. He failed to submit any rebuttal evidence at that time. As the applicant was afforded a timely opportunity to respond to the INS notice regarding the termination of his status and failed to do so, his rebuttal made 14 years later is without merit. Accordingly, the AAO finds the record to establish that the applicant's marriage to [REDACTED] was entered into solely for the purposes of evading U.S. immigration law.

Section 204(c) of the Act states:

...no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws...

As the applicant entered into a marriage in 1987 for the purpose of evading U.S. immigration laws, he is precluded from benefiting from the Form I-130, Petition for Alien Relative, filed by his mother. As this petition underlies the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, and the instant waiver application, the AAO finds no purpose would be served in considering whether the applicant is eligible for a waiver of inadmissibility. Therefore, the appeal will be dismissed.

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 has not met that burden.

ORDER: The appeal is dismissed.