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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: LONDON, ENGLAND

Date: AUG 20 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Section 212(i) of the 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London, England. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The record reflects that the applicant is a native and citizen of Finland who was found to be inadmissible to the United States pursuant section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and step-children in the United States.

The field office director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The field office director further found that the applicant failed to demonstrate he merits the Secretary's favorable discretion and denied the application accordingly. *Decision of the Field Office Director*, dated April 20, 2007.

On appeal, counsel contends that the applicant did not commit fraud or misrepresentation, and that even if he did, he timely retracted any misrepresentation. In addition, counsel contends that the applicant established that his wife would suffer extreme hardship if his waiver application were denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on May 20, 2006; a psychological evaluation report for Ms. [REDACTED] a letter from [REDACTED] ex-husband; a copy of the divorce settlement between Ms. [REDACTED] and her ex-husband; copies of [REDACTED] bank account statements and other financial documents; a copy of [REDACTED] Social Security statement; articles addressing alcohol-related problems in Finland; letters of support; copies of the birth certificates of [REDACTED] three U.S. citizen children from previous relationships; affidavits from the applicant and [REDACTED] a statement of the couple's monthly expenses; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 . . . 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.

In this case, the field office director found, and counsel does not contest, that the applicant entered the United States in August or September of 2004 and remained until November 15, 2004. He re-entered the United States on November 20, 2004, after being granted parole, and had authorization to remain until December 3, 2004. However, the applicant remained until August 31, 2005. The applicant accrued unlawful presence from December 4, 2004, until his departure from the United States on August 31, 2005. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(I), the applicant was barred from again seeking admission within three years of the date of his departure.

The applicant's last departure occurred in 2005. It has now been more than three years since the departure that made the applicant inadmissible pursuant to section 212(a)(9)(B) of the Act. A clear reading of the law reveals that the applicant is no longer inadmissible for unlawful presence.

Section 212(a)(6)(C)(i) of the Act 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.

After a careful review of the record evidence, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The field office director found that, based on the Record of Deportable/Inadmissible Alien (Form I-213), the applicant was "very evasive[,] misrepresented facts on several occasions," and was reluctant to admit his previous overstay. *Decision of the Field Office Director, supra*. According to the Form I-213 in the record, the applicant claimed he had last been in the United States "several months ago." The Form I-213 states that the applicant initially stated he was applying for entry with his "girlfriend" for a two-week vacation, but that after being referred to secondary inspection and placed under oath, the applicant "now claims [she] is his fianc[e]." The Form I-213 concluded that "[h]e is now returning to marry his USC fianc[e], and adjust his status . . . to that of a permanent resident." The Form I-213 states that the applicant claimed he was last in the United States "several months ago" and that he could not remember exactly when, but that the applicant admitted under oath that he had previously been in the United States from November 20, 2004, until August 31, 2005. In addition, according to the Form I-213, the applicant had initially stated that he went to Mexico in January or February 2005, but then purportedly stated during his sworn statement that he went to Mexico in early November 2004. Furthermore, the Form I-213 states that

Because it has been established that the applicant is not inadmissible under either section 212(a)(9)(B)(i)(I) of the Act, or section 212(a)(6)(C)(i) of the Act, whether the field office director correctly assessed hardship to the applicant's spouse under is moot and will not be addressed.¹

ORDER: The appeal is dismissed as the applicant is not inadmissible and the waiver application is, therefore, moot.

¹ In addition, the AAO notes that Department of State records indicate that the applicant was granted a visa on January 29, 2009. Therefore, assuming the applicant has already been issued a visa, this waiver application is moot for that reason as well.