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U.S. Department of Homeland Security
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: PORTLAND, OREGON

Date:

FEB 19 2009

IN RE:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn, and the application declared moot.

The applicant is a native and citizen of Mexico who entered the United States with a V2 visa on April 19, 2005. He previously resided in the United States from March 2001, when he entered without inspection, until July 2002, when he returned to Mexico. He was found inadmissible 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 procured admission to the United States by fraud or willful misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is the son of a Lawful Permanent Resident and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to remain in 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 accordingly. *See Decision of the District Director* dated May 25, 2006.

On appeal, the applicant states that he comes from a hard-working family and has filed his taxes, has obeyed the laws, and has never received any government assistance. He requests that the denial of his waiver application be reconsidered, and states that he will continue to be a hard-working resident of the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

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

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

- (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(iii) Exceptions.-

- (I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

....

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record reflects that the applicant is a twenty-four year-old native and citizen of Mexico who resided in the United States from March 2001, when he entered without inspection, until July 2002, when he returned to Mexico. Although the applicant resided in the United States without lawful status for over one year, he was a minor until May 22, 2002, his eighteenth birthday. Pursuant to section 212(a)(9)(B)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(I), the period of time when the applicant was under eighteen years of age shall not be taken into account when determining unlawful presence. The applicant was therefore only unlawfully present in the United States from May 22, 2002 to July 2002, and is not inadmissible under section 212(a)(9)(B)(i) of the Act.

The applicant failed to disclose his unlawful presence in the United States when applying for a V2 nonimmigrant visa in 2002, and stated on his nonimmigrant visa application that he had never been to the United States. To determine whether a concealment is material, the test is “whether the concealment has a natural tendency to influence the decision . . ., sufficient to raise a fair inference that a statutory disqualifying fact actually existed.” *Kungys v. United States*, 485 U.S. 759 (1988). The Attorney General has also established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination

that he be excluded. *See Matter of Gilkevorkian*, 14 I&N Dec. 454 (BIA 1973); *Matter of S- and B-C-*, 9 I&N Dec 436, 447 (BIA 1960 AG 1961).

Since the applicant was never inadmissible under section 212(a)(9)(B) of the Act, his misrepresentation that he has never been to the United States when applying for a V visa was not material because he was not inadmissible on the true facts and the misrepresentation did not shut off a line of inquiry relevant to his eligibility.¹ The applicant is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act for stating he had never been present in the United States when applying for a V visa.

Based on the record, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(B)(i) or section 212(a)(6)(C)(i) of the Act. The waiver application filed pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act is therefore moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn, and the application for a waiver of inadmissibility is declared moot.

¹ Pursuant to section 214(q)(2) of the Act, 8 U.S.C. § 1184(q)(2), the grounds of inadmissibility in section 212(a)(9)(B) of the Act do not apply in determining eligibility for a V visa, so even if the applicant had been unlawfully present for six months or more after his eighteenth birthday, he would not have been ineligible for a V visa.