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



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: LOS ANGELES, CA

Date:

JAN 08 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) and 212(i)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and (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.

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).

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and the matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The district director found that the applicant, [REDACTED] was not eligible for a waiver under section 212(i) of the Immigration and Nationality Act (the Act), which section of the Act refers to inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. In her decision, the director did not address any fraud or misrepresentation, but noted the applicant's criminal convictions which would render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). A waiver for this section is under section 212(h) of the Act. *Decision of the District Director*, dated August 5, 2004. The AAO found that the record reflected possible inadmissibility under both sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act. However, as the record did not contain the records of conviction which would have allowed the AAO to make a determination as to whether the applicant's crimes involved moral turpitude, the AAO issued a request for evidence, asking the applicant to submit his records of conviction and provide a sworn affidavit regarding how he obtained his fraudulent California ID card. The applicant provided no response to the request for evidence. The AAO will therefore consider the record as complete.

In the request for evidence, the AAO stated that the applicant admitted to having a fraudulent California Identification Card obtained with someone else's birth certificate and social security number. Although this, in itself, does not render the applicant inadmissible under section 212(a)(6)(C) of the Act, the AAO stated that if the birth certificate used to obtain the California ID card was that of a U.S. citizen, the applicant may be inadmissible under section 212(a)(6)(C)(ii) of the Act, for which there is no waiver of inadmissibility.

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.

(ii) FALSELY CLAIMING CITIZENSHIP-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining

the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (I).

The applicant submitted no response to the AAO's request that he provide a sworn affidavit regarding how he obtained his fraudulent California ID card. As the burden is on the applicant to establish his admissibility to the United States, the AAO finds that the applicant failed to prove he is not inadmissible pursuant to section 212(a)(6)(C) of the Act or that he is eligible for a waiver of inadmissibility under section 212(i) of the Act.

The AAO had also requested that the applicant submit his complete records of conviction as his criminal convictions may render him inadmissible under section 212(a)(2) of the Act, which states that:

(A)(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 (other than a purely political offense)
or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The applicant provided no response to the request that he submit his complete records of conviction, the submission of which would have enabled the AAO to make a determination as to whether his crimes involved moral turpitude. As the burden is on the applicant to establish his admissibility to the United States, the AAO finds that the applicant has failed to prove he is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. Although there is a waiver under section 212(h) of the Act for inadmissibility pursuant to section 212(a)(2)(A)(i)(I) of the Act, having found the applicant did not establish eligibility for a waiver under section 212(i) of the Act, no purpose would be served in discussing whether a section 212(h) waiver should be granted.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

ORDER: The appeal is dismissed. The application is denied.