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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: MIAMI, FL

Date: JUL 08 2009

IN RE:

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:

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, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the District Director for further consideration consistent with this decision.

The applicant is a native and citizen of Egypt 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 sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with his family.

The district director concluded that the record did not establish that a *qualifying relative* would suffer extreme hardship if the applicant were to be removed from the United States and, further, that a favorable exercise of discretion was not warranted in the applicant's case. The district director denied the application accordingly. *Decision of the District Director*, dated September 23, 2008.

On appeal, counsel states that U.S. Citizenship and Immigration Services (USCIS) abused its discretion in denying the Form I-601, Application for Waiver of Ground of Excludability, and failed to provide the applicant with a copy of the derogatory evidence it relied upon and the opportunity to rebut that evidence. *Form I-290B, Notice of Appeal or Motion*, dated October 7, 2008.

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 indicates that on March 17, 2005, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, based on the Form I-130, Petition for Alien Relative, filed by his U.S. citizen spouse. At his adjustment interview on September 9, 2008, the applicant testified under oath that he had provided false information on a previous Form I-485 filed under the provisions of the Legal Immigration Family Equity (LIFE) Act. On his Form I-601,

submitted on the day of his interview, the applicant stated that he had submitted fraudulent documents in support of this prior application. The AAO notes, however, that USCIS is precluded from considering information contained in a legalization (LIFE Act) file for any purpose other than a legalization determination. Section 245A(c)(5) of the Act states, in pertinent part:

(A) In general

Except as provided in this paragraph, neither the Attorney General [now Secretary], nor any other official or employee of the Department of Justice [now Department of Homeland Security] or bureau or agency thereof, may –

- (i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;
- (ii) make any publication whereby the information furnished by any particular applicant can be identified; or
- (iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(D) Construction

(i) In general

Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from another source.

....

(E) Crime

Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

Accordingly, the applicant's statements concerning the false information provided on his prior adjustment application under the LIFE Act and his submission of fraudulent documents to support that application may not be used as a basis for a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

The applicant also stated on his Form I-601 and in an accompanying statement that he had falsely claimed to have entered the United States without inspection on the Form I-589, Request for Asylum in the United States, he filed in 1991. While the AAO notes this information, it does not find the record to establish that this misrepresentation was material to the applicant's asylum claim, as required by section 212(a)(6)(C)(i) of the Act, and, therefore, to render him inadmissible. To be considered material, a misrepresentation must be shown by clear, unequivocal and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, a USCIS decision. *Kungys v. United States*, 485 U.S. 759 (1988). The AAO observes that the district director also found that the applicant at his removal hearing had falsely claimed to have entered the United States without inspection. As the AAO does not find the record to demonstrate that this misrepresentation was intended to procure any benefit under the Act, it is not established as a misrepresentation for the purposes of section 212(a)(6)(C)(i). Accordingly, the record does not establish that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

However, the record reflects that the district director also found the applicant to be inadmissible to the United States under sections 212(a)(6)(C)(ii) of the Act for having claimed to be a U.S. citizen, specifically when he registered to vote in Florida on November 1, 1996, voted in general elections held on November 7, 2000 and November 5, 2002 in Broward County, Florida, served on a Florida jury on March 21, 2002 and applied for a mortgage on January 17, 2002. The district director further determined that the applicant was inadmissible under section 212(a)(10)(D) of the Act for having voted in Broward County, Florida elections.

Section 212(a)(6)(ii) of the Act states:

(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 chapter . . . 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 . . . 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.

Section 212(a)(10)(D) of the Act states:

(i) In general

Any alien who has voted in violation of any Federal, State or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(i) Exception

In the case of an alien who voted in a Federal, State, or local election . . . in violation of a lawful restriction of voting to citizens, if each natural 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 such violation 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 violation.

The AAO notes the district director's findings regarding the applicant's claims to U.S. citizenship and his participation in two Florida elections. It does not, however, find the record to support these findings as it does not contain the evidence on which they were based. Although the record includes envelopes that indicate they contain documentary evidence related to the applicant's claims to U.S. citizenship and the elections in which he was determined to have voted, these envelopes are empty. No other documentation in the record relates to the district director's findings.

In that the evidence of record does not establish that the applicant is inadmissible to the United States under sections 212(a)(6)(ii) and 212(a)(10)(D) of the Act, the AAO will remand this matter to the district director for further consideration, the restoration of any missing evidence to the record, and the issuance of a new decision. If the new decision is adverse to the applicant, the decision shall be certified to the AAO and the applicant allowed 30 days in which to respond as required by 8 C.F.R. § 103.4(a)(2).

ORDER: The matter is remanded to the District Director for further action in accordance with the preceding discussion and the issuance of a new decision.