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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: Office: PORTLAND, ME (ST. ALBANS, VT) Date: JUN 22 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.

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Maine and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Guatemala 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 obtained an immigration benefit through fraud or willful misrepresentation. The record reflects that the applicant used a fraudulent lawful permanent resident card and social security card to obtain employment. The applicant has a U.S. citizen daughter 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 daughter.

The director concluded that the applicant had failed to establish that a qualifying relationship exists and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated September 15, 2006.

On appeal, counsel states that the applicant denies the government's assertions and reasoning that he made a willful misrepresentation regarding a lawful permanent resident card or social security card. Counsel also states that the applicant is eligible to adjust through section 245(i) of the Act and requests that copies of all documents, transcripts, conversations, or notes from examinations made by the U.S. Citizenship and Immigration Services concerning the applicant be released to him within thirty days. *Attachment to Form I-290B*, dated October 20, 2006.

The record indicates that during the applicant's adjustment interview on December 14, 2005 the applicant admitted, under oath, to having used a fraudulent lawful permanent resident card to obtain employment in the United States. The record includes the fraudulent lawful permanent resident card as well as a fraudulent social security card used by the applicant.

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.

The AAO finds that although the applicant used a fraudulent immigration document, the record does not show that he used the document to procure a visa, other immigration documentation or admission into the United States nor does it show that he used the document to procure any other benefit under the Act.

Furthermore, the Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. 9 FAM 40.63, N.61, states, in part, "... (3) the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer....," which the AAO finds persuasive.

The record indicates that the applicant practiced this misrepresentation on his employer, the Olive Garden Restaurant in Laurel, MD and not on an official of the U.S. government.

A review of the documentation in the record fails to establish that the applicant is inadmissible under 212(a)(6)(C) of the Act. Accordingly, the applicant is not inadmissible and the director's findings regarding a misrepresentation under section 212(a)(6)(C) of the Act are withdrawn. The applicant's waiver of inadmissibility application is thus moot and the appeal will be dismissed.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.