

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

H2

FILE:

Office: DENVER (SALT LAKE CITY)

Date: MAR 25 2009

IN RE:

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

ON BEHALF OF APPLICANT:

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.

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, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed. The matter will be returned to the director for continued processing.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit.¹ The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated September 30, 2005.

The record reflects that the applicant entered the United States without inspection in August 1984. In 1988, the applicant filed an Application for Temporary Resident Status as a Special Agricultural Worker (SAW) (Form I-700), which was approved in November 1990. On October 6, 1994, the applicant was sent a Notice of Intention to Rescind (NOIR) her adjustment of status under section 210 of the Act, based on allegations that the documents submitted in support of her SAW application were fraudulent. The applicant failed to respond to the NOIR and a final decision to rescind her adjustment of status was rendered on September 25, 1995.

As explained below, the AAO finds that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on information provided from the applicant's SAW application.

Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6) – Special agricultural workers, provides in pertinent part, that:

6) Confidentiality of information

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may -

¹ The director's decision did not specify what the fraud was, but, as the AAO does not find other evidence of fraud, it must be presumed to be related to information contained in her Application for Temporary Resident Status as a Special Agricultural Worker ("SAW") (Form I-700)

(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, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual 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.

(B) Required disclosures. - The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) 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 any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

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

(7) Penalties for false statements in applications. -

(A) Criminal penalty. – Whoever -

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or,

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion. - An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except on her SAW application. In addition, the applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Because it has not been established that the applicant is inadmissible, whether the district director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed. The district director's decision is withdrawn as it has not been established that the applicant is inadmissible. The district director shall continue to process the adjustment application.