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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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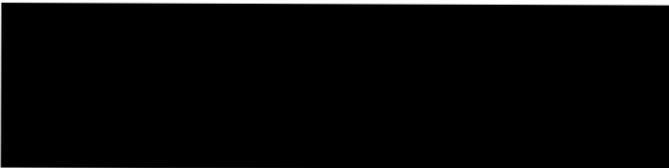


FILE: [REDACTED] Office: SPOKANE, WA Date: **MAY 15 2009**

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), 8 U.S.C. section 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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Spokane, Washington and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director to reopen the applicant's Form I-485 application, to determine if the applicant is inadmissible under section 212(a)(6)(C)(i), and if so, to address the merits of the applicant's application for a waiver of that ground of inadmissibility. If that decision is adverse to the applicant, it shall be certified for review to the AAO.

The applicant is a native and citizen of Kenya who was found statutorily ineligible to apply for adjustment of status because he obtained admission to the United States by means of fraudulent documents and is not therefore considered "admitted" to the United States pursuant to sections 245(a) and 101(a)(13)(A) of the Act. The applicant has asserted that he is eligible to apply for adjustment, and that he is not 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse and, should he be found inadmissible, 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 spouse.

The record reflects that the applicant sought to enter the United States with a Kenyan passport and a B-1/B-2 nonimmigrant visa bearing the name [REDACTED] on May 22, 2002. The applicant was inspected and admitted with a period of authorized stay expiring on November 21, 2002. The applicant married his spouse in the United States on November 12, 2005, and she filed the Form I-130 on June 19, 2006. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on the same date. The Form I-130 was approved on April 23, 2008.

On June 12, 2008, the field office director, citing *Orozco v. Mukasey*, 521 F.3d 1068 (9<sup>th</sup> Cir. 2007), denied the Form I-485 on the basis that an alien who obtains entry into the United States by fraudulent means has not been "admitted" as required by section 245(a) of the Act. The field office director denied the applicant's Form I-601 on the same date on the basis that "no useful purpose would be served in granting" the waiver application because the applicant is statutorily ineligible for adjustment of status.

On appeal, counsel asserts that the applicant's use of another person's passport cannot be considered fraud because the applicant was "under duress and diminished capacity." *Counsel's Brief* at 2 (August 8, 2008). Counsel contends that the applicant's actions were "not voluntary" as he was "facing death and serious imminent harm providing him with no other means to escape Kenya." *Id.* Thus, counsel asserts, the applicant's actions can be distinguished from the actions of the respondent in *Orozco*. *Id.* at 11-24. Counsel further contends that USCIS has a regulatory duty to adjudicate the applicant's Form I-601 despite the *Orozco* decision. *Id.* at 2, 8-11. Counsel requests that the AAO reverse the denial and grant the waiver, or remand the case to the field office director with instructions to adjudicate the waiver application on the merits. *Id.* at 3.

Subsequent to the filing of the appeal, the Ninth Circuit Court of Appeals vacated the *Orozco* decision. See 546 F.3d 1147 (9<sup>th</sup> Cir. October 20, 2008).

Section 245(a) of the Act provides that the “status of an alien who was inspected and admitted . . . into the United States . . . may be adjusted . . . to that of lawful permanent residence . . . .”

Section 101(a)(13)(A) of the Act provides that the “terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”

In light of the Ninth Circuit’s decision of October 20, 2008 to vacate its previous holding in *Orozco*, the AAO finds that the applicant’s entry was a lawful entry after inspection and authorization by an immigration officer. He was admitted to the United States and is therefore eligible to apply for adjustment of status under section 245 of the Act. Because the decision of the field office director to deny the Form I-601 was based solely on the applicant’s statutory ineligibility to apply for adjustment of status, it is withdrawn.

The AAO notes that the field office director, in denying the Form I-601 and Form I-485 applications, did not make a specific finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, or address whether the applicant is eligible for a waiver of inadmissibility under section 212(i) of the Act. Consequently, the matter will be remanded to the field office director to reopen the applicant’s Form I-485 application, to determine if the applicant is inadmissible under section 212(a)(6)(C)(i), and if so, to address the merits of the applicant’s application for a waiver of that ground of inadmissibility. If that decision is adverse to the applicant, it shall be certified for review to the AAO.

**ORDER:** The decision of the field office director is withdrawn. The matter is remanded to the field office director to reopen the applicant’s Form I-485 application, to determine if the applicant is inadmissible under section 212(a)(6)(C)(i), and if so, to address the merits of the applicant’s application for a waiver of that ground of inadmissibility. If that decision is adverse to the applicant, it shall be certified for review to the AAO.