



U.S. Citizenship  
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FILE:

Office: BOSTON, MA

Date: NOV 04 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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Boston, Massachusetts. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted and the previous decisions of the field office director and the AAO will be affirmed.

The applicant is a native and citizen of Uganda 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 3, dated March 26, 2008. The AAO dismissed the subsequently filed appeal. *Decision of AAO Acting Chief*, at 5, dated May 4, 2009.

On motion, counsel asserts that the field office director's denial of the applicant's Form I-485 and Form I-601 referenced derogatory information and/or evidence that was not provided to the applicant; the failure to provide the applicant with the derogatory material denied him the opportunity to review the allegations prior to rebuttal; the AAO erred in finding that the appeals process addressed the applicant's concern by offering him an opportunity to rebut the field office director's findings; the applicant has not been confronted with the purported derogatory information relating to a false claim to U.S. citizenship, false claim to permanent residence, a California DUI case, and a false claim to an officer at the U.S. Embassy in Nairobi, Kenya that he had been granted political asylum. *Motion to Reopen and Reconsider*, at 3, 5-6, undated.

Counsel cites to 8 C.F.R. § 103.2(b)(16)(i) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988) in asserting that an applicant must be informed of derogatory information to be used against him or her and must be given a reasonable amount of time to rebut the information. *Id.* at 5.

With regard to being provided derogatory **material**, the regulation at 8 C.F.R. § 103.2(b)(16) permits an applicant to, "inspect the record of proceeding which constitutes the basis for the decision." However, the record contains no evidence that the applicant ever requested permission to inspect the record of proceeding (i.e. to be provided with the derogatory **material** to inspect).

With regard to being provided derogatory **information**, the regulation at 8 C.F.R. § 103.2(b)(16)(i) states, in pertinent part:

If the decision will be adverse...and is based on derogatory **information** considered by the Service and of which the applicant...is **unaware**, he/she will be advised of this fact and offered an opportunity to rebut the information and present information in his/her behalf before the decision is rendered...

The AAO notes that there is no evidence that the applicant was unaware of the derogatory information at issue. The applicant does not contest the derogatory information in the field office director's decision. As such, the procedure set forth in the regulation at 8 C.F.R. § 103.2(b)(16)(i) and in *Matter of Obaigbena* is inapplicable to the applicant's case.

Furthermore, the AAO's review of the record finds the applicant to be inadmissible under section 212(a)(6)(C)(ii)(I) of the Act for his February 6, 2001 representation to an Immigration Enforcement Agent that he was a naturalized U.S. citizen.

Section 212(a)(6)(C)(ii) of the Act provides, in pertinent part, that:

- (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.

There is no waiver for this ground of inadmissibility and the exception in section 212(a)(6)(C)(ii)(II) of the Act does not apply to the applicant. Accordingly, no purpose would be served in addressing the applicant's Form I-601 waiver. The previous decisions of the field office director and the AAO will be affirmed.

**ORDER:** The motion is granted and the previous decisions of the field office director and the AAO are affirmed.