



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: SEATTLE, WASHINGTON Date:

NOV 17 2009

IN RE:

[Redacted]

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:

[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Seattle, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The acting field office director's decision will be withdrawn and the appeal will be dismissed as moot. The matter will be returned to the acting field office director for continued processing.

The record reflects that the applicant is a native and citizen of South Korea 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. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) 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 his wife and children in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Acting Field Office Director*, dated June 30, 2009.

On appeal, counsel contends, *inter alia*, that the applicant is not inadmissible because he had no knowledge the immigration consultant his wife hired filed fraudulent documents.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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 record shows that the applicant and his wife entered the United States in June 1999 using B-2 visitor visas. In December 1999, the applicant filed an Application to Extend/Change Nonimmigrant Status (Form I-539), requesting a six-month extension. The USCIS granted the applicant's Form I-539, authorizing the applicant and his wife to stay in the United States until June 22, 2000. The record indicates that sometime in 2000, the applicant's wife read a newspaper advertisement in the Korean newspaper advertising services from an immigration consultant and hired the consultant. On June 23, 2000, the immigration consultant filed a second Form I-539, requesting that the applicant's wife's status be changed to F-2 student visa and that the applicant and their son be adjusted as dependants. Counterfeit Forms I-20 and bank letters were purportedly submitted with the application. The applicant and his wife stated during a telephone interview that they never received any Form I-20 and admitted that the bank letters used in the application were not genuine. The applicant claims that neither he nor his wife signed any application, never instructed the consultant to submit fraudulent documents, have never seen the fraudulent bank letters, and never represented to anyone that his wife would attend school or be a student. *Affidavit of [REDACTED] in Support of I-290B Application*, dated July 29, 2009.

After a careful review of the record, the AAO concludes that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The record reflects that the applicant's wife was the primary applicant on the Form I-539. If there was any fraud involved in the application, it was related to her, not to the applicant. There is no evidence that the applicant provided any documentation related to this application. Under these unique circumstances, the evidence supports the applicant's assertion that he never willfully misrepresented a material fact or knowingly or intentionally perpetrated fraud. As such, the AAO finds that the acting field office director erred in finding the applicant inadmissible for fraud or willfully misrepresenting a material fact. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the acting field office director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act is moot and will not be addressed. The acting field office director shall reopen the denial of the Form I-485 application continue to process the adjustment application.

ORDER: The acting field office director's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot. The acting field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.