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



U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES Date:

SEP 30 2009

IN RE: Applicant: [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:



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 District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Mexico 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a Lawful Permanent Resident and the beneficiary of an approved Petition for Alien Relative. He 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 wife.

The district director concluded that the applicant 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 District Director*, dated January 11, 2007.

On appeal, counsel for the applicant asserts that the district director cited non-binding case law and failed to consider the extreme circumstances presented. *Statement from Counsel on Form I-290B*, dated January 29, 2007; *Brief from Counsel*, dated February 20, 2007. Counsel contends that the record contains erroneous information, as the applicant did not attempt to enter the United States by fraud or misrepresentation on September 24, 2001. *Brief from Counsel* at 1.

The record contains a brief from counsel; copies of the applicant's passport and driver's license; tax and employment documents for the applicant and his wife; copies of birth records for the applicant and his wife; a copy of the applicant's wife's permanent resident card; a copy of the applicant's marriage certificate; statements from the applicant and his wife; reports on conditions in Mexico; affidavits from individuals attesting to the applicant's good character, and; information regarding the applicant's immigration history. The entire record was reviewed and considered in rendering this decision.

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 record indicates that on March 25, 1993, the applicant was intercepted by U.S. Border Patrol agents after having entered the United States without inspection near San Ysidro, California. He admitted to being from Mexico, and presented a drivers license and counterfeit Temporary Resident Card (Form I-688) when asked if he had any immigration documents in his possession. The applicant stated that he knew the card was false, and that he knew he could not use it at a port of entry, but that he had used it for work with a dry cleaning company in Los Angeles.

The applicant did not use the fraudulent temporary resident card to attempt to enter the United States, and there is no indication that he misrepresented his identity or immigration status to the border patrol agent who asked to see his documents. Rather, he presented the documents and admitted the card was false and that he had used it for employment purposes. It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa or other documentation or immigration benefit must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). The record does not establish that the applicant presented a fraudulent document to a U.S. government official in order to procure admission to the United States or any other immigration benefit or that he otherwise engaged in misrepresentation to a U.S. government official. The applicant used the fraudulent card only to obtain employment, and there is no indication on the record that he used the card to obtain any other document or benefit provided under the Act. Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for obtaining or possessing a fraudulent temporary resident card.

The record indicates that at the time of his entry in 1993, the applicant was prosecuted for illegal entry in violation of 8 U.S.C. § 1325 and possession of a counterfeit immigration document in violation of 18 U.S.C. § 1546(a). It is not clear from the record whether the applicant was convicted under 18 U.S.C. § 1546, but even if he was convicted of this charge, it would not render him inadmissible. The Board of Immigration Appeals held in *Matter of Serna*, 20 I & N Dec. 579 (BIA 1992), that a conviction under 18 U.S.C. § 1546 does not involve moral turpitude and therefore does not render an individual inadmissible because the statute requires only knowledge that the document is fraudulent, but no intent to use the document to defraud the United States government. *Matter of Serna*, 20 I & N Dec. 579 at 585-86.

Based on the record, the AAO finds that the applicant, in possessing a fraudulent temporary resident card and using it to obtain employment, did not commit fraud or misrepresent a material fact to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. He is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver application. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.