

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

Hq

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 27 2010

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)

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not 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 waiver application is therefore moot. The director shall reopen the Form I-485, Application to Register Permanent Residence or Adjust Status.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The 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 Director*, at 3, dated April 13, 2009.

On appeal, counsel asserts that the director erred in denying the applicant's waiver application and details the hardship that the applicant's spouse would encounter if the applicant were to be removed. *Form I-290B*, at 2, received May 12, 2009.

The record includes, but is not limited to, counsel's letter and brief, the applicant's spouse's statement, letters of support for the applicant and his spouse, a social worker's evaluation of the applicant's spouse and country conditions information on Cuba. The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO finds Title 9, Section 40.63, Note 4.6 of the Foreign Affairs Manual persuasive. It states:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.

The record reflects that the applicant presented a photo-substituted Spanish passport to an immigration inspector when he arrived at the Newark International Airport on November 21, 2002. Counsel states that the applicant presented the Spanish passport but also told the immigration inspector that it was not his passport. *Brief in Support of Appeal*, at 1, undated. Counsel, therefore, contends that the applicant does not need a waiver as he truthfully revealed his status and identity to the immigration inspector. *Id.* at 1-2, undated.

The AAO notes that the record contains a memorandum that relates to the applicant's arrival in the United States, which is signed by two immigration inspectors at Newark International Airport and dated November 21, 2002. The memorandum states that the applicant presented a Spanish passport at the time of his arrival and then requested political asylum because he was Cuban. Based on this

documentation, the AAO finds the record to support counsel's claims regarding the applicant's timely retraction of his misrepresentation and that he is not inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willfully misrepresenting a material fact. Accordingly, the appeal will be dismissed as the underlying waiver application is moot.

ORDER: The appeal is dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application is therefore moot. The director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.