

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

A4

FILE:

Office: CHICAGO, IL

Date: **JAN 09 2007**

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(6)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(a) (6)(C)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the decision of the district director will be withdrawn, and the waiver application will be declared moot.

The applicant [REDACTED] (Mr. [REDACTED]), is a native and citizen of Mexico who first entered the United States on December 28, 1994, without inspection, and applied to adjust his status to lawful permanent resident on May 19, 1998. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(C)(6)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(C)(6)(i), for presenting false information on his Illinois driver's license application. Mr. [REDACTED] 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 U.S. citizen (USC) wife, [REDACTED] Mrs. [REDACTED] and two USC children.

The record reflects that Mr. [REDACTED] was sentenced to 12 months probation for presenting false information on his Illinois driver's license application in violation of section 6-302(a)(3) of the Illinois Vehicle Code. Mr. [REDACTED] stated that he worked under the name he provided on his driver's license application only in order to work. See Mr. [REDACTED] statement, dated July 12, 2004. The district director found Mr. [REDACTED] inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(C)(6)(i), "As an alien who fraudulently claimed a false name to an Immigration Officer of the United States." *District Director's decision*, dated March 23, 2005. The district director also found 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). *Id.*

On appeal, counsel asserts that the district director erred in finding Mr. [REDACTED] inadmissible under section 212(a)(C)(6)(i) of the Act. Counsel asserts that the district director should have found Mr. [REDACTED] inadmissible under section 212(a)(2)(A)(i)(I) for conviction of a crime involving moral turpitude so that his waiver application would be adjudicated under section 212(h) rather than section 212(i) and extreme hardship to his children, in addition to extreme hardship to his wife, would be considered.

Section 212(a)(6)(C) of the Act provides, in relevant part:

(i) 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.

...

(iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

There is nothing in the record to reflect that Mr. [REDACTED] at any time, misrepresented himself to an immigration officer of the United States. Instead, the record indicates that Mr. [REDACTED] presented false information in order to obtain a driver's license and in order to obtain employment. His acts are not, therefore, grounds for inadmissibility under section 212(a)(6)(C)(i) of the Act. The BIA has ruled that "working in the United States is not 'a benefit provided under this Act,'" and that the use or possession of a fraudulent document is not the equivalent of fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act. See *Cervantes-Gonzalez, supra* at 571 (Villageliu and Schmidt, JJ., concurring) (clarifying that the benefit sought by the respondent was the right to travel with a U.S. passport and that the decision of the majority "may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is

obtaining a benefit under the Act”). In his concurring opinion, Judge Villageliu adds, “It is long settled that inadmissibility for immigration fraud does not ensue from the mere purchase of fraudulent documents, absent an attempt to fraudulently use the document for immigration purposes.” *Id.*, citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975); *Matter of Sarkissian*, 10 I&N Dec. 109 (BIA 1962); *Matter of Box 10* I&N Dec. 87 (BIA 1962); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992).

Mr. [REDACTED]’s acts, though unlawful, were not for the purpose of procuring “a visa, other documentation, or admission into the United States or other benefit provided under the Act.” Section 212(a)(6)(C)(i).

In addition, the record reflects that Mr. [REDACTED] was convicted of perjury under the Illinois Vehicle Code and was given a term of probation of 12 months and a fine of \$2000. A violation of the Illinois vehicle is punishable by a maximum civil penalty of \$10,000. *See Illinois Vehicle Code - 625 ILCS 5, Section 18b-107*. Since this was a civil violation and not a criminal perjury conviction under the Illinois Criminal Code (See Illinois Criminal Code of 1961 - 720 ILCS 5, Section 32-2), Mr. [REDACTED] was not convicted of a crime involving moral turpitude under the Act and is not inadmissible under section 212(a)(2)(i)(I).

As Mr. [REDACTED] is not inadmissible under section 212(a)(6)(C)(i) or under section 212(a)(2)(A)(i)(I), a waiver of this ground of inadmissibility is not required.

ORDER: The appeal is dismissed, as the waiver application is moot.