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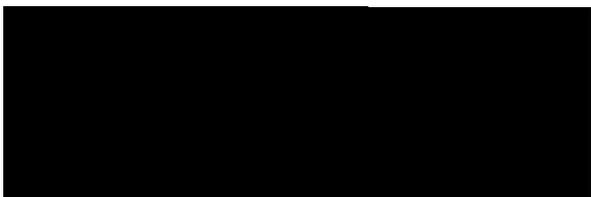
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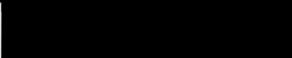
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H4



FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 21 2009

IN RE:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kenya who, on July 6, 1993, was admitted to the United States as a nonimmigrant visitor. The applicant remained in the United States past his authorized stay. On April 4, 1994 the applicant filed a Request for Asylum in the United States (Form I-589). On September 29, 1994, the applicant appeared at John F. Kennedy International Airport. The applicant presented his Kenyan passport containing the same U.S. nonimmigrant visa he used to enter the United States on July 6, 1993. The applicant was placed into secondary inspections, where it was discovered that he had previously overstayed his nonimmigrant status and applied for asylum. On September 29, 1994, the applicant was placed into immigration proceedings. On January 4, 1995, the immigration judge ordered the applicant removed *in absentia*. The applicant failed to surrender for removal or depart from the United States. On August 1, 2001, immigration officers apprehended the applicant. On September 26, 2001, the applicant was removed from the United States and returned to Kenya. On August 21, 2003, the applicant's U.S. citizen son, [REDACTED], filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on June 25, 2004.

On January 27, 2004, the applicant filed a Form I-212, which was denied on October 4, 2004. The applicant appealed the denial of the Form I-212. On August 23, 2005, the appeal was administratively closed. On November 17, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).¹ On February 7, 2007, the applicant filed a second Form I-212. The applicant claims to have resided in Canada since his removal. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with his U.S. citizen son.

The director determined that the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for illegally reentering the United States after having been removed. The director determined that the applicant was ineligible to apply for permission to reapply for admission under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C), because he did not remain outside the United States for the required ten years and denied the Form I-212 accordingly. *See Director's Decision* dated May 21, 2007.

On appeal, the applicant states that he left the United States on September 26, 2001 and has not returned. *See Applicant's Brief*, dated June 12, 2007. In support of his contentions, the applicant submits the referenced brief and copies of passport pages indicating his travel to Canada. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

¹ The AAO notes that the Form I-601 was also denied on May 21, 2007; however, the applicant has only filed one Form I-290B and has, therefore, only appealed the application now before it.

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) Other aliens.-Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case on a alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested.

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

- (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.
- (ii) Falsely claiming citizenship. –
 - a. 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 . . . is inadmissible.
 - b. Exception-

In the case of an alien making a representation described in subclause (I), if each natural parents 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.

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

The record reflects that the applicant had obtained a Kenyan passport and at least three U.S. nonimmigrant visas under the name ‘[REDACTED]’ and date of birth “April 14, 1956.” The record reflects that the applicant has utilized these nonimmigrant visas to enter the United States on multiple occasions before and after his removal from the United States: May 5, 1995, August 2, 1995, June 16, 1996, March 13, 1997, December 8, 1997, April 28, 1998, May 22, 1998, May 3, 1999, June 18, 1999, July 13, 1999, September 7, 1999, May 15, 2000, October 16, 2000, April 3, 2001, February 25, 2003 and June 21, 2003.

The record contains a copy of the passport issued to the applicant under this alias on May 29, 1996 and a copy of one of the U.S. nonimmigrant visas issued on May 31, 1996 to the applicant under this alias. The photographs on these documents match the applicant’s detention and removal photographs. Additionally, the addresses provided on the Arrival/Departure Verification Record (Form I-94) reflect addresses which are associated with the applicant’s identity of ‘[REDACTED]’

The AAO finds that the applicant has obtained a visa and admission to the United States by fraud on multiple occasions and are, therefore, inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse or parent of the applicant.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents. The record reflects that the applicant is currently married to a Kenyan citizen. The record reflects that the applicant’s parents are citizens of Kenya. The applicant has never made any claims that his parents or spouse are lawful permanent residents or U.S. citizens and a search of USCIS’ electronic records indicates that there are no records for the applicant’s spouse or parents. The AAO finds that the applicant has no qualifying family members on which to base a waiver request under section 212(i) of the Act. The AAO therefore finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and is statutorily ineligible for relief pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is

mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(6)(C)(i) of the Act, which are very specific and applicable. The applicant is statutorily ineligible for a waiver of this ground of inadmissibility. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.