

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



HS

FILE:



Office: NEWARK, NJ

Date: MAR 01 2010

IN RE:



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 Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The record reflects that the applicant is a native and citizen of Haiti 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and their United States citizen children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 27, 2009.

United States Citizenship and Immigration Services (USCIS) records show that the applicant in the present case acquired lawful permanent resident status on February 24, 1982 under the assumed alias of [REDACTED]. In 1985, the applicant's use of a false identity became known to the legacy Immigration and Naturalization Service (now USCIS), but there is no record of any action being taken with regard to the applicant. On November 22, 2005, the applicant was placed into proceedings for fraudulently obtaining his lawful permanent resident status. These proceedings were terminated on November 22, 2006.

Section 246 of the Immigration and Nationality Act states:

(a) If, at any time **within five years** [emphasis added] after the status of a person has been otherwise adjusted under the provisions of section 245 or 249 of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.

Despite his use of another individual's identity, the applicant in the present case acquired lawful permanent resident status in 1982. As no action was taken within the five-year period specified by section 246(a) of the Act, USCIS no longer has the authority to rescind the applicant's status based on his fraudulent adjustment application.¹ Accordingly, the applicant remains a lawful permanent resident of the United States and is not required to apply for a waiver under section 212(i) of the Act.

Because the applicant is a lawful permanent resident, further pursuit of the matter at hand is moot and the appeal will be dismissed.

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

¹ The AAO also notes that in *Garcia v. Attorney General*, 553 F.3d 724 (3rd Cir. 2009), the Third Circuit Court of Appeals held that the five-year statute of limitations for seeking to rescind a grant of adjustment of status also bars removal proceedings based on the applicant's fraudulent application for adjustment.