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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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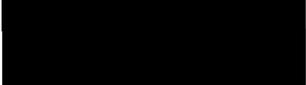


U.S. Citizenship
and Immigration
Services



HS

FILE:



Office: NEW YORK, NEW YORK

Date:

MAR 10 2010

IN RE:

Applicant:



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:

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Haiti who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant 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 her Haitian husband and United States citizen children.

The District Director determined that the applicant failed to establish that she had a qualifying relative for a section 212(i) waiver and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 5, 2005.

On appeal, the applicant states she “did not knowingly or willfully misrepresented [sic] herself.” *Form I-290B*, filed December 27, 2005. Additionally, the applicant states her two United States citizen children “will be deprived of the love and affection of their parents.” *Id.*

The record includes, but is not limited to, a letter from the applicant, birth certificates for the applicant’s children, the applicant’s marriage certificate, and various immigration documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present application, the record indicates that the applicant initially entered the United States on June 14, 1985, on a B-2 nonimmigrant visa with authorization to remain until December 13, 1985. On July 5, 1988, the applicant was admitted into the United States on a B-2 nonimmigrant visa with authorization to remain until January 4, 1989. On April 23, 1992, an Order to Show Cause (OSC) was issued against the applicant. On March 4, 1993, an immigration judge ordered the applicant removed *in absentia*. On April 2, 1993, a Warrant of Deportation (Form I-205) was issued. On June 8, 1993, the applicant filed a motion to reopen the immigration judge’s decision. On June 22, 1993, an immigration judge granted the applicant’s motion to reopen. On July 2, 1993, the INS filed an appeal of the immigration judge’s decision on the applicant’s motion to reopen. On September 20, 1993, the Board of Immigration Appeals (BIA) dismissed the appeal.

On December 15, 1993, the applicant filed a Request for Asylum in the United States (Form I-589). On July 28, 1994, an immigration judge granted the applicant voluntary departure to depart the United States by August 29, 1994. On August 5, 1994, the applicant filed an appeal of the Immigration Judge’s decision. On November 21, 1997, the BIA dismissed the applicant’s appeal and ordered her to voluntarily depart the United States within 30 days of the order. The applicant failed to depart the United States as ordered. On December 22, 1997, the applicant filed a Petition for Review with the Second Circuit Court of Appeals (Second Circuit). On June 25, 1998, another Form I-205 was issued. On November 1, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 14, 2003, the applicant filed a Form I-601. On December 5, 2005, the District Director denied the applicant’s Form I-485 and Form I-601, finding the applicant failed to establish that she had a qualifying relative for a section 212(i) waiver. On January 5, 2006, the applicant

filed a motion to reopen the denial of her Form I-485. On June 19, 2007, the applicant's motion to reopen was dismissed. On July 12, 2007, the applicant filed an appeal of the denial of her Form I-485 to the BIA.

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

- (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).

In a sworn statement dated April 23, 1992, the applicant admits that in 1990 a friend, [REDACTED] offered to help her "get permission to work here legally." The applicant states that she "renewed her Haiti Passport and gave it to [REDACTED] along with \$300.00 U.S. dollars," and that [REDACTED] "stated that she will give then to her friend and he will put a stamp on the passport." The applicant further states that her passport was returned to her with "Immigration and Employment Authorization stamps on it." The applicant claims that in February 1991, she gave an individual named [REDACTED] \$1,000.00, three photographs of herself and her Haitian birth certificate. She states that she "also signed an applicat[ion] for farm worker in Miami." The applicant states that two days later she paid Romain an additional \$1,500.00 to pick up her Temporary Residence Card. She further states that when her Temporary Residence Card was about to expire she returned to [REDACTED] office and met with an individual named [REDACTED]. She claims that, [REDACTED] stated that he will help me to get a permanent card. [REDACTED] gave me a Farmer's Immigration application, told me to fill it out completely and submit the application to the U.S. Immigration Service." The applicant states that she submitted the application, but the Service wrote to her stating that the Alien registration number was not valid. She states that she returned to [REDACTED] office and left her Temporary Residence Card with [REDACTED]. The applicant states that the following day, [REDACTED] returned her card "with an extension sticker attached on the back of [her] card."

The record contains two original Applications by Lawful Permanent Resident for New Alien Registration Receipt Card (Forms I-90) filed by the applicant with the Eastern Service Center (now the Vermont Service Center) on July 26, 1991 and September 16, 1991, respectively. On both of the applications, the applicant marked the box "other" with the notation [REDACTED] to explain the basis for her new card request. The record contains an original letter from the Eastern Service Center (EAC) dated August 6, 1991 stating that the ESC was returning the applicant's July 26, 1991 Form I-90 application because the alien registration number she entered on the application did not relate to her. The letter further requested that the applicant submit evidence of her Form I-700 filing or approval notice.

The AAO notes that the Form I-700 is an Application for Temporary Resident Status as a Special Agricultural Worker (SAW) under section 210 of the Act. In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment

for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). Aliens who are granted temporary resident status by way of the Special Agricultural Worker (SAW) legalization program are adjusted to permanent resident status after certain designated time periods. See Section 210(a)(2) of the Act, 8 U.S.C. § 1160(a)(2). Aliens who adjust from temporary status to permanent resident status under section 210 of the Act must file a Form I-90 to receive their Form I-551 Alien Registration Card (now Permanent Resident Card). See 56 Fed. Reg. 482-83 (Jan. 7, 1991).

The applicant's sworn statement demonstrates that she knowingly purchased a fraudulent temporary resident card for employment. Had the applicant only taken this action, she would not necessarily have been found inadmissible under section 212(a)(6)(C)(i) of the Act. The BIA's concurring opinion in *Matter of Cervantes-Gonzalez* noted, "The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act. Although the use or possession of such document is punishable under section 274C of the Act, 8 U.S.C. § 1324c (1994 & Supp. II 1996), working in the United States is not 'a benefit provided under this Act,' and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent." 22 I&N Dec. 560, 571 (BIA 1999)(citations omitted).

The inadmissibility in this case stems from the applicant's attempt to procure a permanent resident card by presenting herself to the legacy Immigration and Naturalization Service (INS) as an alien who has been granted temporary residence under the SAW legalization program. The AAO notes that a permanent resident card is considered "other documentation" within the purview of section 212(a)(6)(C)(i). See *Matter of O*, 7 I. & N. Dec. 486, 487 (BIA 1957)(stating that the term "other documentation" under section 212(a)(19) (now section 212(a)(6)(C)(i)) "contemplates any documents with which an alien seeks to gain admission, either as an alien or as a citizen, and which normally facilitate admission."). In *Matter of Y-G-*, the BIA noted, "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, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found." 20 I&N Dec. 794, 796 (BIA 1994)(citations omitted).

The record reflects that the applicant indicated in her sworn statement that she filed a "Farmer's Immigration application" in order to procure a permanent resident card. Documentation in the record shows that she twice submitted to the INS a Form I-90 with the notation [REDACTED] to obtain a permanent resident card. U.S. Citizenship and Immigration Services (USCIS) records reveal that the alien number used by the applicant to request a permanent resident card (Form I-551) was assigned to another individual. There is no indication in USCIS records that the applicant herself filed an Application for Temporary Resident Status as a Special Agricultural Worker (Form I-700) pursuant to section 210 of the Act. The Eastern Service Center provided the applicant with the opportunity to submit evidence that such an application has been filed or approved, but the applicant failed to do so. The applicant's failure to provide evidence of having filed a Form I-700 indicates that she willfully misrepresented herself before the INS. A misrepresentation is generally material only if by it the alien could receive a benefit

for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988). The AAO concludes that the applicant's use of another individual's alien number in order to procure a permanent resident card, and by virtue of that card, permanent resident status, a benefit for which she was not eligible, is a material misrepresentation. Accordingly, the AAO agrees with the director's determination that the applicant is inadmissible for misrepresentation under section 212(a)(6)(C)(i) of the Act.

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

A waiver under section 212(i) of the Act is dependent first upon a showing that the applicant is the spouse or daughter of a United States citizen or of a lawful permanent resident of the United States. The record in the present case does not establish that the applicant is the spouse or daughter of a United States citizen or of a lawful permanent resident. Since the applicant does not appear to have any qualifying family members, she is ineligible for a section 212(i) waiver of inadmissibility. Consequently, the appeal is moot and must be dismissed.

In proceedings for application for a 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 has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.