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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

[redacted]

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MAR 25 2010

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [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.

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).

Michael Shumway

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.

The record reflects that the applicant is a native and citizen of Egypt 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), for willfully misrepresenting material facts in an attempt to procure a permanent resident card. 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 his naturalized U.S. citizen daughter.

The director determined that the applicant failed to establish that he has a qualifying relative for a section 212(i) waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Director's Denial Notice*, dated September 12, 2007.

On appeal, counsel asserts that, "[the] applicant has a close bond with his U.S. citizen daughter" and "[i]t would be devastating to her, if her father were deported." Counsel contends that the applicant's waiver should be granted "because of the length of his residence in the U.S. and close bond with his daughter." *See Form I-290B, Notice of Appeal or Motion*, dated October 18, 2007.

The record includes, but is not limited to, the applicant's daughter's naturalization certificate, financial documentation, a court disposition, and various immigration documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

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).

The director provided the following account of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act:

> USCIS records show that on November 16, 1992, you filed an application by lawful permanent resident for new alien registration receipt card (Form I-90). In support of your application, you provided a photocopy of an I-688, Temporary Resident Card. The alien registration card number listed on your application and on the photocopy of the I-688 does not relate to you and further reve[a]led that you [n]ever filed an application for temporary resident status or that such an application was ever approved. Form I-688 that you provided was found to be fraudulent. You committed fraud and misrepresentation . . . thus making you inadmissible to the United States.

See Director's Notice of Intent to Deny, dated March 29, 2007.

The record reflects that on November 16, 1992 the applicant filed an Application to Replace Alien Registration Card (Form I-90) with the Eastern Service Center (now the Vermont Service Center). On the Form I-90, the applicant marked box (i), which states that his status has been automatically converted to permanent resident. The applicant attached to the Form I-90, a photocopy of a Temporary Resident Card (From I-688) containing his name, date of birth and photograph. On December 17, 1992, the Director of the Eastern Service Center (EAC) denied the Form I-90 after finding that a review of Service (the legacy Immigration and Naturalization Service or INS) records indicated that the alien registration number listed on the Form I-90 and the Form I-688 did not relate to him. The director noted that a search of Service records did not establish that the applicant filed an Application for Temporary Resident Status (Form I-700) or that such an application was approved. The director further noted that the photocopy of the Form I-688 the applicant submitted did not conform to known standards of an authentic Form I-688, and was therefore found to be fraudulent.

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 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 inadmissibility in this case stems from the applicant's attempt to procure a permanent resident card by willfully misrepresenting himself before the INS as an alien who has been granted temporary resident status under the SAW legalization program. *See Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994)(noting, "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.") (citations omitted). 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."). A misrepresentation is generally material only if by it the alien could receive a benefit for which he would not otherwise have been eligible. *See Kungys v. United States,* 485 U.S. 759 (1988). The AAO concludes that the applicant's presentation to the INS of a fraudulent Form I-688 in order to procure a permanent resident card, and by virtue of that card, permanent resident status, a benefit for which he 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 son 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 son of a United States citizen or of a lawful permanent resident. The record shows that on April 28, 1994, the applicant wed [redacted], a U.S. citizen, in Brooklyn, New York. In a statement dated June 21, 2007, counsel notes that the applicant's spouse is now deceased and the applicant's daughter is the only family member residing in the United States. Counsel reiterates this statement on appeal, noting that "[the] [a]pplicant's former spouse is deceased, and [he] has one U.S. citizen daughter in the United States . . . ." *See Form I-290B, Notice of Appeal or Motion*, dated October 18, 2007. The applicant's daughter is the sole individual listed on the applicant's Form I-601 waiver application; however, she is not a qualifying family member for section 212(i) extreme hardship purposes. Since the applicant does not appear to have any qualifying family members, he 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.