

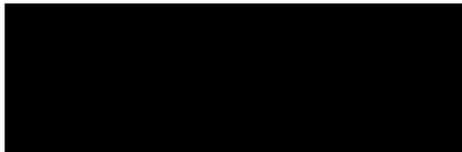
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: COLUMBUS

Date:

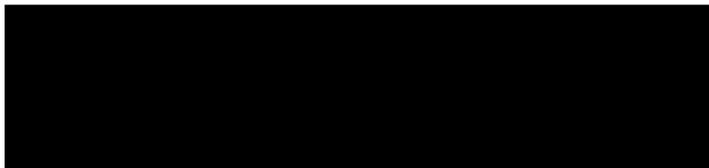
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IN RE:



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.

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared moot. The matter will be returned to the field office director for continued processing.

The record reveals that the applicant, a native and citizen of Senegal, presented fraudulent documents and provided false information when applying for Status as a Temporary Resident as an Alien who Illegally Entered the U.S. Prior to January 1, 1982 (Form I-687), in September 1990. The applicant was thus 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 numerous immigration benefits, including work authorization and permanent residency, by fraud or willful misrepresentation. 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 U.S. citizen spouse and child, born in January 2000.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 15, 2007.

On appeal, counsel for the applicant submits a brief, dated December 28, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [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.

With respect to the field office director's findings that the applicant had committed fraud or willful misrepresentation on his Form I-687, the AAO finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, as discussed below.

Sec.245a, 8 U.S.C.1255a. Adjustment of Status of Certain Entrants Before January 1, 1982, to That of Person Admitted for Lawful Residence, states in pertinent part:

(c)(5) Confidentiality of Information.-

(A) In General.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required Disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized Disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In General.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal Convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(c)(6) Penalties for False Statements in Applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except on his Form I-687 legalization application. In addition, the applicant has not been convicted for false statements in that or any other application. The information regarding his application for legalization should not have been used for a finding of inadmissibility in the present application.

The AAO thus finds that the field office director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.

ORDER: The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application accordingly.