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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

**PUBLIC COPY**

[REDACTED]

H5

FILE: [REDACTED] Office: MIAMI, FL Date: SEP 22 2010

IN RE: [REDACTED]

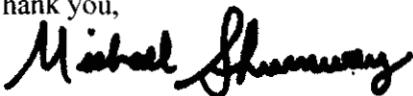
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,  
  
Perry Rhew  
Chief, Administrative Appeals Office

**ACTION COMPLETED**  
**APPROVED FOR FILING**  
Initials: JT Date: 6/22/11  
FCO/Unit Cow

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida and the applicant appealed the District Director's decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the District Director for further consideration and the issuance of a new decision, which if adverse to the applicant was to be certified to the AAO. The District Director has again denied the waiver application and certified her decision to the AAO. The District Director's decision will be affirmed. The waiver application will be denied.

The applicant is a native and citizen of Egypt 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 sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with his family.

The District Director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were to be removed from the United States and, further, that a favorable exercise of discretion was not warranted in the applicant's case. She further found that the applicant was inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(10)(D) of the Act for having represented himself as a U.S. citizen, and that no exception or waiver of these grounds was available. The District Director denied the application accordingly. *Decision of the District Director*, dated March 17, 2010.

Counsel states that the District Director has failed to provide the applicant with a copy of the derogatory evidence on which she relied and the opportunity to rebut this evidence. *Form I-290B, Notice of Appeal or Motion*, dated April 13, 2010.

In its July 8, 2009 decision, the AAO found the record before it to lack the documentation referenced by the District Director in finding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(ii) and 212(a)(10)(D) of the Act, i.e., documentation that the applicant had registered to vote in Florida on November 1, 1996, voted in general elections held on November 7, 2000 and November 5, 2002 in Broward County, Florida, served on a Florida jury in March 2002 and applied for a mortgage in January 2002 claiming to be a U.S. citizen. On certification, these documentary deficiencies have been remedied.

The record contains a Broward County voter registration card, signed by the applicant and dated October 31, 1996, on which he indicates he is a U.S. citizen and resides at [REDACTED]. The AAO notes that this is the same address listed by the applicant on a Form G-325A, Biographic Information, dated July 3, 2001, for the period January 1991 through June 1997. The record also includes a printout of Broward County voting records that shows that an [REDACTED] residing at [REDACTED] voted in the general elections of November 7, 2000 and November 5, 2002. This same address was claimed by the applicant on a Form G-325A, dated March 4, 2005. The record further contains a certification from Howard C. Forman, Clerk of Circuit and County Court, 17<sup>th</sup> Judicial Circuit, Fort Lauderdale, Florida that states Usama M. ElAbaidy served as a juror on May 21, 2002 and a

cancelled \$15 check, dated May 30, 2002, made out to [REDACTED] at [REDACTED] [REDACTED] for one day of jury duty. The check is endorsed by the applicant and "for deposit only" and the applicant's Citibank account number are written on the back. Also included in the record is a copy of the applicant's Uniform Residential Loan Application for the property at [REDACTED] which he signed on January 17, 2002 and in which he indicated that he was a U.S. citizen.

Counsel contends that the District Director was required to provide the applicant with copies of the preceding documents and an opportunity to rebut this evidence prior to issuing her decision. The AAO acknowledges that the regulation at 8 C.F.R. § 103.2(16)(i) requires that United States Citizenship and Immigration Services (USCIS), prior to issuing an adverse decision based on derogatory evidence unknown to an applicant, inform the applicant of this information and provide him or her with an opportunity to rebut it. In the present matter, however, the AAO does not find that the derogatory evidence on which the District Director relied was unknown to the applicant. The evidence referenced by the District Director consists of documents that were submitted or signed by the applicant (his voter registration card, the jury service check he deposited in his bank account and his loan application) or that record actions publicly taken by the applicant (Broward County voting records and the certification of jury service). Accordingly, counsel's assertion that the District Director was required to provide this documentation to the applicant is not persuasive. Moreover, the AAO notes that the applicant, in accordance with 8 C.F.R. § 103.4(a)(2), was notified of his opportunity to respond to the District Director's decision at the time it was certified to the AAO. However, no brief or evidence relating to this matter has been received by the AAO as of the date of this decision.

Section 212(a)(6)(ii) of the Act states:

(ii) Falsely claiming citizenship

(I) 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 chapter . . . or any other Federal or State law is inadmissible.

(II) Exception

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

Section 212(a)(10)(D) of the Act states:

(i) In general

Any alien who has voted in violation of any Federal, State or local constitutional provision, statute, ordinance, or regulation is inadmissible.

(ii) Exception

In the case of an alien who voted in a Federal, State, or local election . . . in violation of a lawful restriction of voting to citizens, if each natural parent 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 such violation 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 violation.

Pursuant to 18 USC § 611:

(a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the Office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia or Resident Commissioner . . . .

At the time that the applicant registered to vote, Fla. Stat. § 97.051 stated:

A person registering to vote must subscribe to the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that I am a citizen of the United States and a legal resident of Florida.

The record demonstrates that the applicant obtained a Florida voter registration card on October 31, 1996, thereby indicating that he had sworn an oath claiming to be a U.S. citizen and that he voted as a U.S. citizen in Broward County, Florida in the 2000 and 2002 presidential elections, in which it was illegal for an alien to vote. It also establishes that he presented himself as a U.S. citizen when he served on a Broward County, Florida jury in 2002 as Fla. Stat. § 40.01 requires all Florida jurors to be U.S. citizens. The AAO notes that the applicant again claimed to be a U.S. citizen on the mortgage loan application he submitted in 2002. Accordingly, it finds that he is inadmissible under both section 212(a)(6)(C)(ii) and section 212(a)(1)(D) of the Act, and that the record fails to indicate that he qualifies for the exception provided in either section.

In that the applicant is statutorily inadmissible to the United States and no waiver or exception is available to him, the AAO finds no purpose would be served in considering whether he is inadmissible under section 212(a)(6)(C)(i) of the Act. It also finds no reason to discuss whether he

may merit a favorable exercise of discretion. Accordingly, the decision of the District Director will be affirmed and the waiver application denied.

**ORDER:** The decision of the District Director is affirmed. The waiver application is denied.