identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

JAN 14 2011

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:

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.

Thank you,

for

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 Ecuador 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 procuring an immigration benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and the mother of a lawful permanent resident child and United States citizen child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 husband, children, and grandchildren.

The Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated September 10, 2008.

On appeal, the applicant, through counsel, asserts that the United States Citizenship and Immigration Services' (USCIS) "decision denying [a]pplicant's I-601 waiver is contrary to the facts and not supported by the evidence. It is against the weight of the facts and contrary to pertinent law." *Form I-290B*, filed October 6, 2008.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's husband, daughter, and daughter-in-law; letters of support for the applicant and her husband; medical documents for the applicant's husband; tax documents; articles on poverty in Ecuador, high blood pressure and stress, depression, divorce and separation; and documents on country conditions in Ecuador. 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:

> (C) Misrepresentation.-
>
> (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.
>
> (i) 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 Act (including section 274A) or any other Federal or State law is inadmissible.
>
> . . . .

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

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...

In denying the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), the Director indicated that "[d]ocumentation submitted with the application shows that [the applicant] previously provided false information on a Form I-9 (Employment Verification) indicating that [she] [was] a Lawful Permanent Resident Alien ( ))." *Decision of the Director*, dated September 10, 2008. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act based on this prior act.

Upon review of the record, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and she does not require a waiver under section 212(i) of the Act. As discussed above, the record shows that the applicant provided false information on a Form I-9. In a letter dated May 18, 2009, counsel claims that the applicant worked for a few weeks with the Form I-9. He states that "any such misrepresentation is not material to [the applicant's] immigration case, as any such misrepresentation merely to gain employment is not for a benefit under the [A]ct, and therefore is not a misrepresentation as defined under INA § 212(a)(6)(C)(i)." The AAO notes the record does not establish that the applicant presented the Form I-9 to any other individual or organization other than her private employer.

The legacy Immigration and Naturalization Service (INS) General Counsel's Office addressed in an April 30, 1991 published legal opinion the issue of whether an applicant who presents counterfeit documents in completing Form I-9 is subject to inadmissibility for misrepresentation under former section 212(a)(19) (now section 212(a)(6)(C)(i)) of the Act. The legal opinion provides:

> For two reasons, we conclude that an alien's false statements on Form I-9 do not render the alien subject to exclusion under Section 212(a)(19) of the Act. First, an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits. Secondly, while the decision of the Service to grant an alien authority to accept employment is a benefit under the INA, an employer's decision to hire any

> particular individual involves a private employment contract. Thus, false statements on Form I-9 are not for the purpose of obtaining a benefit under the INA and, therefore, cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.

Genco Op., Paul W. Virtue, Act. Gen. Co., *Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9),* No. 91-39, 2 (April 30, 1991).

Similarly, the Board of Immigration Appeals (Board) 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 United States Courts of Appeals for the Tenth and Eighth Circuits have concluded that employment can be properly deemed a "purpose or benefit under the Act" in the context of applying section 212(a)(6)(C)(ii) of the Act. Specifically, when an applicant has made a false claim of U.S. citizenship for the purpose of obtaining employment with a private employer, he may properly be deemed inadmissible under section 212(a)(6)(C)(ii) of the Act. *Rogriguez v. Mukasey*, 519 F.3d 773, 777 (8th Cir. 2008) (stating that "the explicit reference to [U.S.C.] § 1324a [section 274A of the Act] in [U.S.C.] § 1182(a)(6)(C)(ii)(I) [section 212(a)(6)(C)(ii)(I) of the Act] indicates that private employment is a purpose or benefit of the Act."); *Kechkar v. Gonzales*, 500 F.3d 1080, 1084 (10th Cir. 2007) (finding that "[i]t appears self-evident that an alien who misrepresents citizenship to obtain private employment does so, at the very least, for the purpose of evading § 1324a(a)(1)(A)'s prohibition on a person or other entity knowingly hiring aliens who are not authorized to work in this country.").

However, these decisions are limited to an analysis of the application of section 212(a)(6)(C)(ii) of the Act, and the conclusions are based on the reference to section 274A of the Act found in section 212(a)(6)(C)(ii) of the Act. Section 274A of the Act renders it unlawful for an employer to hire an alien without authorization from USCIS, thus section 212(a)(6)(C)(ii) of the Act specifically contemplates false claims of U.S. citizenship for the purpose of employment in the United States. Section 212(a)(6)(C)(i) of the Act is more limited in scope than section 212(a)(6)(C)(ii) of the Act, as it does not reference section 274A of the Act and it does not reach false representations made for purposes or benefits under other Federal or State laws. *See* section 212(a)(6)(C)(ii) of the Act. Thus, the finding of the Board and Federal courts that employment is a "purpose or benefit under the Act" in the context of the application of section 212(a)(6)(C)(ii) of the Act does not constitute a finding that employment is also

a "benefit under the Act" as contemplated by section 212(a)(6)(C)(i) of the Act.

Based on the foregoing, the AAO finds that the April 30, 1991 legal opinion of legacy INS General Counsel's Office and the concurring opinion of the Board in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 571, continue to serve as current guidance for the application of section 212(a)(6)(C)(i) of the Act.

In the present matter, the applicant committed misrepresentation by providing false information on a Form I-9, and presenting this Form I-9 to her private employer, not a U.S. government official authorized to grant visas or other immigration benefits. She did so for the purpose of obtaining employment, which has not been determined to be a "benefit provided under [the] Act" as contemplated by section 212(a)(6)(C)(i) of the Act. Therefore, the record fails to establish that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act. *See Matter of Y-G*, 20 I&N Dec. 794, 797-98 (BIA 1994) (finding that an individual did not commit fraud or misrepresentation as contemplated by section 212(a)(6)(C)(i) of the Act because he voluntarily revealed that he possessed fraudulent travel documents upon first encountering U.S. immigration officers); *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 571. The applicant has not made a false claim of U.S. citizenship, thus she is not inadmissible under section 212(a)(6)(C)(ii) of the Act. Accordingly, the applicant is not inadmissible and the Director's findings regarding a misrepresentation under section 212(a)(6)(C)(i) of the Act are withdrawn. The applicant's waiver application is thus moot and the appeal will be dismissed.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The Director shall reopen the denial of the Form I-485 application and continue to process the adjustment application.