

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

H5



DATE: Office: PHILADELPHIA, PA

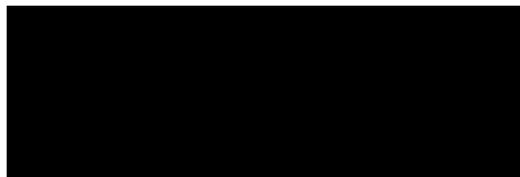
FILE:

JUL 14 2011

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:



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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The Field Office Director's decision will be withdrawn. The appeal will be dismissed as the underlying application is moot.

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), for having sought a benefit under the Act through fraud or willful misrepresentation. The applicant is the child of United States citizens and 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, U.S.C. § 1182(i), in order to reside in the United States with his parents and his children.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated on February 3, 2009.

On appeal, counsel asserts that denial of the applicant's waiver request would result in extreme hardship to his United States citizen parents. *Form I-290B*, dated February 25, 2009 and the accompanying brief in support of the appeal.

The record includes, but is not limited to, statements from the applicant, his mother and brother, brief from counsel in support of the appeal, copies of medical records of the applicant's parents, tax and other financial documents, and copies of reports about country conditions in Haiti. 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.

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

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

(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 her denial of the applicant's waiver application, the Field Office Director stated "Your inadmissibility arises from past attempts to gain an immigration benefit through fraud and willful misrepresentation, pursuant to Section 212(a)(6)(C)(i) of the Act. Specifically, this ground of inadmissibility arises from an incident where you had a family friend arrange for a fraudulent stamp to be placed in your passport. You used that stamp to apply for, and receive, a social security number that aided you in working without authorization." *Decision of the Field Office Director*, at 3, dated February 3, 2009. 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 consequently does not require a waiver under section 212(i) of the Act. The record reflects that the applicant had a fraudulent temporary I-551 stamp placed in his passport and that he used the fraudulent document to obtain a social security card and employment as a cook with a private employer in the United States.

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 an Employment Eligibility Verification Form (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' (BIA) 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 (8<sup>th</sup> 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 (10<sup>th</sup> 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 BIA 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 the legacy INS General Counsel's Office and the concurring opinion of the BIA 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 used a fraudulent I-551 stamp to obtain a Social Security number in order to work in the United States. As the applicant's misrepresentation was for the purpose of obtaining

employment, which is not a benefit under the Act, he is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and does not require a waiver. Therefore, the Field Office Director's decision is withdrawn and the appeal will be dismissed as the underlying waiver application is moot.

**ORDER:** The appeal is dismissed as the waiver application is moot. The Field Office Director shall reopen the denial of the Form I-485 application and continue to process the adjustment application.