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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**



HS

DATE: **AUG 13 2012** Office: ATLANTA, GEORGIA FILE:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Atlanta, Georgia. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

The applicant is a native and a citizen of India 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 presenting fraudulent documents when applying for adjustment of status. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 29, 2007. The AAO found that the applicant was inadmissible pursuant to section 212(a)(6)(C) for misrepresentation and that the applicant was not prima facie eligible for a waiver because he did not have a qualifying relative. *AAO Decision*, dated October 22, 2010. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that the applicant's former attorney submitted the fraudulent document on his behalf, and that the applicant should not be considered inadmissible for misrepresentation. *Form I-290B*, received November 24, 2010.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant presented false documents when applying for adjustment of status in 1995.

On motion, counsel for the applicant asserts that the applicant's former attorney submitted the fraudulent adjustment application and that the applicant should not be found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Counsel asserts that the applicant's former attorney was convicted of fraud and has been disbarred, and submits additional documents in support of his assertion.

Counsel previously asserted that the AAO should note the differences in signatures between the applicant and his former attorney, and conclude that the adjustment application submitted was not signed by the applicant. The AAO is not qualified to render an expert conclusion with regard handwriting and the applicant has not submitted such analysis from a qualified professional. Even if

the applicant were to establish the forms were not signed by him, this would not be conclusive evidence that he did not have knowledge of or endorse the fraudulent submission.

An examination of the record does not support counsel's assertions regarding the applicant's former attorney. The record contains a copy of a disciplinary order, filed on October 12, 2006, naming the applicant's former attorney. However, this disciplinary order states that the applicant's former attorney was to be suspended from the practice of law for failing to pay annual registration fees. The applicant's adjustment application was submitted in 1995, while the attorney's suspension for failing to pay annual registration fees occurred in 2006 and appears in no way related to the applicant or findings of fraud. There is no evidence that the applicant's former attorney was convicted of fraud, or that he was disbarred for having committed fraud.

The documents submitted contain information ostensibly provided by the applicant, including personal information and details of his application, and the record does not contain any evidence that the applicant did not participate in the filing of his adjustment application such that the representations therein should not be attributed to him.

Accordingly, the record indicates that the applicant submitted fraudulent documents in support of an adjustment application in 1995, and he is therefore inadmissible pursuant to section 212(a)(6)(C) of the Act.

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

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative.

As noted by the Chief, AAO, the applicant has not established that he has a qualifying relative. Counsel asserts on motion that the applicant should not have to file a waiver because he is not inadmissible. As discussed above, the applicant has not shown that he was erroneously deemed inadmissible for misrepresentation to obtain a benefit under the Act. As the applicant does not appear to be prima facie eligible for a waiver under section 212(i) of the Act, the prior decision of the AAO will be affirmed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted, the prior decision of the AAO is affirmed, and the Form I-601 application remains denied.