



U.S. Citizenship
and Immigration
Services

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DATE:

DEC 08 2012

OFFICE:

ATLANTA

FILE:

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Ron Rosenberg, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen Mexico 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), due to his attempted procurement of a visa to the United States through fraud or material misrepresentation. The applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States, as well as under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for having unlawfully returned to the United States after having accrued over one year of unlawful presence. The applicant is the derivative beneficiary on his spouse's application for lawful permanent residence. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

In a decision dated August 2, 2011, the Field Office Director concluded that the applicant was not eligible to apply for admission to the United States as a result of his inadmissibility under section 212(a)(9)(C) of the Act.

On appeal, the applicant states that his U.S. citizen spouse will suffer extreme hardship as a result of his inadmissibility. He does not contest his inadmissibility on appeal.

In support of the waiver application, the record includes, but is not limited to, a brief from former counsel to the applicant, a statement from the applicant, a statement from the applicant's spouse, biographical information for the applicant, his spouse, and their children, medical records for the applicant's spouse, financial information for the applicant and his spouse, documentation concerning the applicant and his spouse's children, letters from family and friends of the applicant and his spouse, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act, which provides, in pertinent part, that:

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.

The applicant is also inadmissible under Section 212(a)(9) of the Act, which provides, in pertinent part, that:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...
(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Lastly, the applicant is inadmissible under inadmissibility under Section 212(a)(9) of the Act, which states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

...

The record establishes that the applicant entered the United States without inspection on or about December 1989. The record also notes that the applicant was married in Cook County, Illinois on [REDACTED] 1997. He also signed his son's birth certificate on [REDACTED] 2001. The record indicates that the applicant appeared at the U.S. Consulate in Ciudad Juarez on August 18, 2003, to seek an immigrant visa based on the then approved I-140 filed on his behalf by [REDACTED]. The applicant admitted at the immigrant visa interview that presented a

fraudulent job letter that falsified his experience. The I-140 petition was revoked and the applicant was denied an immigrant visa. The record illustrates that the applicant now resides in Decatur, Alabama, but there is no indication in the record that the applicant obtained admission to the United States. As a result of the applicant's departure from the United States after accruing one year or more of unlawful presence between [REDACTED] 1997 and [REDACTED] 2003, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is in effect for 10 years after the date of his last departure from the United States. The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a visa to the United States through fraud or material misrepresentation. That is a permanent grounds of inadmissibility.

The applicant would be eligible to apply for a waiver of his inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, but for his inadmissibility under Section 212(a)(9)(C)(i)(I) of the Act.

The record reflects that the applicant entered the United States without being admitted after having been unlawfully present in the United States for an aggregate period of more than one year. As a result of the applicant's unlawful entry into the United States after his period of unlawful presence, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* the applicant has obtained consent to reapply for admission (Form I-212). In the present matter, the applicant is currently residing in the United States. He has not remained outside of the United States for the required 10 year period. As such, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

As a result of the applicant's inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, the AAO finds that no purpose would be served in adjudicating the applicant's appeal of the denial of his application for a waiver of inadmissibility under section 212(i) of the Act. Because no purpose would be served at this time in adjudicating a waiver of the applicant's inadmissibility under section 212(i) of the Act (Form I-601), the applicant's Form I-601 was properly denied.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.