

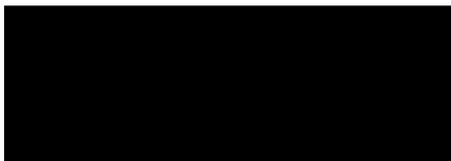
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



**U.S. Citizenship
and Immigration
Services**



H5

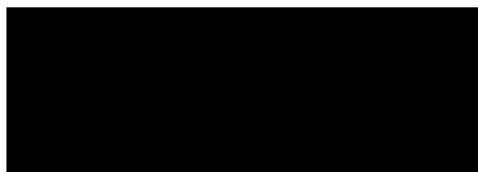
DATE: **JAN 26 2012** OFFICE: ATHENS, GREECE

FILE:

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and under section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B)

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, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The applicant is a native and citizen of Israel who left the United States on August 2, 2007. He 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 admission to the United States through fraud or misrepresentation. The applicant was also found to be inadmissible under section 212(a)(9)(B)(i)(I) of the Act for having accrued more than 180 days but less than one year of unlawful presence. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), as well as section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to join his U.S. Citizen spouse and child in the United States.

The Field Office Director concluded that the applicant failed to show his qualifying relative would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated August 12, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal, a photocopy of a sworn statement, evidence of criminal proceedings and expungement, medical records, financial documents, and a travel warning on Israel. In the brief, counsel asserts the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act because in August 2010 more than three years will have passed since he was last in the United States. Counsel additionally contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because his representation that he had never been arrested or placed in jail was in fact true. *Id.* Counsel indicates that even if the applicant is still found to be inadmissible, the record contains ample evidence of extreme hardship to his U.S. Citizen spouse for a waiver.

The record includes, but is not limited to, the documents listed above, other applications or petitions filed on behalf of the applicant, evidence of birth, marriage, divorce, and citizenship, other financial evidence, copies of U.S. Federal Income Tax Returns, and statements from the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides. in pertinent part:

- (i) 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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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 the present case, the applicant was found to have made a misrepresentation on September 6, 2007 by failing to disclose an arrest. *Decision of Field Office Director*, August 12, 2009. The record reflects the applicant stated under oath that he had never been arrested or put into jail. *Record of sworn statement*, September 6, 2007. The veracity of the applicant's statement is supported by the record. An application for a statement of charges against the applicant was filed on October 20, 2006. *Application for Statement of Charges, District Court of Maryland*, October 20, 2006. The applicant was charged, and the applicant was served with the statement of charges and a summons. *See Statement of Charges*, October 20, 2006. The applicant attended his court hearings, the prosecutor filed a motion to *nolle prosequi* the charge, and the charge was subsequently dismissed. *Order, District Court of Maryland for Montgomery County*, May 15, 2007. Although the applicant was charged and issued a summons, there is no evidence that the applicant was arrested or placed in jail for this incident or for any others. As such, the applicant's statement that he was never arrested or jailed is supported by the record, and does not constitute a misrepresentation under section 212(a)(6)(C)(i) of the Act.

The applicant was also found to have misrepresented his intent during his application for admission into the United States on September 6, 2007. *Decision of Field Office Director*, August 12, 2009. The record reflects the applicant obtained a multiple entry B-1/B-2 visa on February 6, 2006, valid until February 1, 2016. *See B-1/B-2 visa*. The applicant first entered the United States using this visa on February 16, 2006, and attempted to enter again on September 6, 2007. *See Form I-94, Arrival / Departure Record*. During primary inspection for the 2007 entry, the applicant presented his B-1/B-2 visa, and informed immigration officials that he wanted to enter the United States to continue his adjustment of status application.

It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). In this case, the AAO finds the applicant did not make a misrepresentation when questioned during primary inspection. Furthermore, even if he is found to have made a misrepresentation by presenting his B-1/B-2 visa, by immediately admitting he intended to adjust status during primary inspection he made a timely retraction during the first opportunity. *See 9 FAM 40.63 N 4.6*. Moreover, the applicant confirmed his intentions in a sworn statement given during secondary inspection. *Sworn statement*, September 6, 2007. Therefore, the applicant is not inadmissible under section 212(a)(6)(C)(i) for either misrepresenting his

intentions upon application for admission into the United States, or for failing to disclose an arrest or jail time and consequently does not require a waiver of inadmissibility under this section.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

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

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

....

(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.

The applicant was found to have more than 180 days but less than 1 year of unlawful presence, and was therefore subject to inadmissibility under section 212(a)(9)(B)(i)(I) of the Act for three years after the date of his last departure or removal. *Decision of Field Office Director*, August 12, 2009. Records reflect the applicant left the United States on August 2, 2007, and was then denied admission into the United States on September 6, 2007.¹ As more than three years have passed since his last departure from the United States, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act, and consequently does not require a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

The AAO finds the applicant is not inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(I) of the Act, and thus waivers pursuant to section 212(i) and 212(a)(9)(B)(v) of the Act are unnecessary.

ORDER: The appeal is dismissed as the underlying waiver application is moot.

¹ The applicant was allowed to withdraw his application for admission and return to Israel the next day.