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



HS

DATE: JUN 20 2012

OFFICE: ACCRA, GHANA



IN RE:



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

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Accra, Ghana, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(6)(C)(ii)(I), for falsely representing himself to be a U.S. citizen for any purpose or benefit under the Act; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i), for attempting to procure admission or an immigration benefit through fraud or willful misrepresentation of a material fact; 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 more than one year and seeking admission within ten years of his removal from the United States; and section 212(a)(9)(A) of the Act; 8 U.S.C. §1182(a)(9)(A), as an alien previously removed. The applicant seeks waivers of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§1182(i) and 1182(a)(9)(B)(v). The applicant has also filed an application for permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

In a decision dated January 22, 2010, the director denied the waiver application, finding that no waiver was available for a ground of inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act, and that the applicant failed to establish a qualifying relative would experience extreme hardship if he were denied admission. The director also denied the Form I-212 application for permission to reapply for admission as a matter of discretion, stating that it would serve no purpose because the applicant was not eligible for a waiver.

The applicant asserts on appeal that his U.S. citizen wife would experience extreme emotional, financial, and physical hardship if his waiver application is denied.

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

(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 . . . or any other Federal or State law is inadmissible

(II) Exception--In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

Aliens making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are

inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. The record reflects that on June 28, 2000, the applicant sought entry into the United States by claiming to be a U.S. citizen. The applicant is therefore inadmissible under section 212(a)(6)(C)(ii)(I) of the Act. The applicant does not contest his inadmissibility under this provision.

There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(C)(ii)(I) of the Act, and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II) of the Act. As the applicant's inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act statutorily bars his admission to the United States, the AAO finds no purpose would be served in considering whether he is able to establish eligibility for waivers of his inadmissibilities under section 212(a)(6)(C)(i)(I) and section 212(a)(9)(B)(i)(II) of the Act. The appeal will therefore be dismissed.

It is noted that the director also denied the applicant's Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is properly denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. The applicant is mandatorily inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, therefore no purpose would be served in granting the applicant's Form I-212.

The AAO additionally notes, upon review of the record, that pursuant to section 208(d)(6) of the Act; 8 U.S.C. §1158(d)(6), the applicant is permanently ineligible for any benefits under the Act because he filed a frivolous asylum application.

The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Section 208(d) of the Act provides, in pertinent part:

(4) Notice of privilege of counsel and consequences of frivolous application. - At the time of filing an application for asylum, the Attorney General [now Secretary of Homeland Security, "Secretary"] shall

(A) Advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum.

(6) Frivolous applications - If the [Secretary] determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The regulation at 8 C.F.R. § 208.20 states:

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

The record reflects that a Form I-862, Notice to Appear, was issued and served on the applicant on July 21, 2000. During his removal proceedings, the applicant filed an application for asylum, and on January 29, 2001, the applicant was notified by personal service of the consequences of knowingly filing a frivolous asylum application pursuant to section 208(d)(4) of the Act. The notice advised the applicant that if he knowingly filed a frivolous application for asylum, he would “be barred forever” from receiving any benefits under the Act. The immigration judge also advised the applicant verbally on January 29, 2001, of the consequences of knowingly filing a frivolous asylum application.

On October 9, 2002, the applicant's asylum application was denied and he was ordered removed from the United States. The immigration judge's decision reflects that the applicant specifically was found “to have filed a frivolous application for asylum.” The applicant appealed the immigration judge's decision to the Board of Immigration Appeals, which affirmed the immigration judge's decision on March 5, 2004. The applicant is therefore permanently barred from receiving any benefits under the Act.¹

ORDER: The appeal is dismissed.

¹ The record reflects that on March 24, 2005, this agency approved a Form I-130 petition filed on the applicant's behalf. Pursuant to 8 C.F.R. § 205.2(a), the approval of an I-130 petition is revocable upon notice to the petitioner on any ground other than those specified in 8 C.F.R. § 205.1, when the necessity for the revocation comes to the attention of this Service. Because an immigration judge found that the applicant filed a frivolous asylum application, the director should initiate proceedings for revocation of the approved Form I-130 petition.