

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: **OCT 19 2012** OFFICE: GARDEN CITY, NEW YORK

FILE:

IN RE:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the District Director's decision withdrawn, and the waiver application declared unnecessary.

The applicant is a native and citizen of India, who 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 attempting to procure a benefit under the Act by willfully misrepresenting a material fact. The applicant is married to a U.S. lawful permanent resident, and he is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his wife and children.

In a decision dated August 11, 2010, the director determined that while reviewing the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) during his adjustment of status interview, the applicant answered "yes" to question 10, Part 3, concerning whether he sought to procure an immigration benefit by fraud or willful misrepresentation of a material fact. According to the decision, the applicant stated he submitted fraudulent identification in connection with his February 2001 application to adjust status under the Legal Immigration Family Equity Act, and he stated he also submitted fraudulent identification in order to obtain an H1B nonimmigrant visa in 1996. The director determined that the applicant failed to establish that his wife would experience extreme hardship if he were denied admission into the United States. He thus failed to demonstrate that he qualified for a waiver of his inadmissibility under section 212(i) of the Act, and the waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that he did not intentionally submit fraudulent identification documents to obtain an immigration benefit, that he was the victim of a fraudulent scheme involving Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act (Form I-687), and that his U.S. lawful permanent resident wife will experience extreme hardship if he is denied admission into the United States. In support of these assertions, counsel submits letters from the applicant, his wife, and family members; psychological assessment information; financial and employment-related documentation; and country-conditions evidence. 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 that:

- (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 that:

- (1) The Attorney General [now 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 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.

Section 245A of the Act, 8 U.S.C. §1255A, which pertains to the adjustment of status of certain entrants before January 1, 1982, to that of a person admitted for lawful residence, states in pertinent part:

(c)(5) Confidentiality of information.-

(A) In general.-Except as provided in this paragraph, neither the [Secretary], nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

- (i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;
- (ii) make any publication whereby the information furnished by any particular applicant can be identified; or
- (iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The [Secretary] shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The [Secretary] may provide, in the [Secretary's] discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

The record contains no evidence to establish the applicant submitted fraudulent documentation in order to obtain an H1B nonimmigrant visa. Moreover, the applicant states in affidavits that he did not submit fraudulent identification documents in connection with his H1B nonimmigrant visa application in 1996 and that he withdrew the application after being advised by a U.S. Embassy officer in Canada that he was ineligible to apply. In addition, the applicant's Form I-485 reflects that he initially answered "no" to the question concerning whether he sought to procure an immigration benefit by fraud or willful misrepresentation. Written corrections indicating the applicant stated he submitted fraudulent identification in connection with his legalization and H1B visa applications were made by the interviewing immigration officer. The corrections, however, do not include the applicant's initials, and the record lacks a written or detailed statement by the applicant attesting to his submission of fraudulent documents and willful misrepresentation of material facts. Rather, the applicant contests the conclusion that he submitted fraudulent documentation in order to obtain an H1B nonimmigrant visa. He additionally contests that he willfully misrepresented material facts in connection with his Form I-687 legalization application. He asserts that the person who prepared his application misled him, and after he was surprised to see the false name [REDACTED] on his employment authorization card, he protested to the preparer, who told him to file for a name change later. He claims he followed the preparer's advice because he did not know the rules and regulations. The AAO finds upon review that the record fails to demonstrate the information used to find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act was obtained during independent questioning of the applicant, rather than from his Form I-867 legalization application.

In the present case, a review of the record does not demonstrate that the applicant defrauded or made a willful misrepresentation on any application other than his Form I-687 legalization application. In addition, the applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act will not be addressed.

ORDER: The appeal is dismissed as the waiver application is unnecessary.