



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 03 2013** OFFICE: NEW YORK

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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 District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 an immigration through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §1182(i), in order to live in the United States with his U.S. citizen siblings.

The director found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and failed to establish that he had a qualifying relative to qualify for a waiver. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 9, 2011.

On appeal counsel contests the inadmissibility finding and argues that the applicant neither committed fraud nor willfully misrepresented a material fact. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received September 6, 2011, *and counsel's brief*.

The record contains, but is not limited to: Forms I-290B, counsel's brief; Form I-601; Form I-130; Forms I-485, Application to Register Permanent Residence or Adjust Status (Form I-485); Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360); Form I-140, Immigrant Petition for Alien Worker; Form I-687, Application for Status as a Temporary Resident; Form I-131, Application for Travel Document; statements by the applicant and friends; financial documents; naturalization, marriage and birth certificates; employment related documents; diplomas and certificates; and photographs. 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.

The record reflects that the applicant applied for a special immigrant visa with Form I-360 as an imam and for an alien worker visa with Form I-140 as a pastor. The applicant stated during his adjustment of status interview and his declaration that these applications were completed by people he trusted in the mosque and the church who told him they could help him obtain permanent residency. He indicated that he did not know the applications were fraudulent and he was told to simply sign the applications. Counsel argues that the applicant did not engage in willful misrepresentation or fraud because he did not have the requisite knowledge of the misrepresentation.

While “intent to deceive” is not necessary, *Matter of Kai Hing Hui* makes clear that if the misrepresentation was willful and was material, the applicant is inadmissible. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). Willfulness is determined by whether the applicant was fully aware of the nature of information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

The applicant’s declaration indicates that the applicant realized that his immigration applications and related evidence “might have” some incorrect statements, but he did not know this until after the Form I-140 was filed. In the applicant’s adjustment of status interview, he indicated that he paid a person at the church who told him that he could “employ” the applicant in the church and then he could apply for his green card; however, the applicant stated he was never employed by the church. He stated that he never read the paperwork before he signed it. Evidence of photographs of the applicant posing inside and outside the church was also submitted to show his affiliation. When speaking of the special-immigrant visa application, the applicant stated that he was never an imam and realized later that the forms they filled and asked him to sign indicated he was an imam. Although the applicant stated that he misunderstood the question and was nervous during his interview, he did affirm that he misrepresented a material fact to gain an immigration benefit. Documents submitted with the Form I-360 include letters from the mosque’s presidents and imams of other mosques indicating that the applicant is an imam, the applicant’s 1999 tax form stating his occupation as “clergyman,” and certificates of Islamic schools the applicant purportedly attended. The application also includes the applicant’s personal documents related to his retirement, his employment at the [REDACTED] and education certificates, demonstrating that he proactively gave information to the person preparing his application. The applicant also signed his applications under penalty of perjury that they were true and correct and bears responsibility for the information he provided.

The evidence in the record indicates that the applicant misrepresented material facts on two different immigration applications to obtain an immigration benefit. Pursuant to Section 291 of the Act, 8 U.S.C. § 1361, the burden of proving eligibility rests solely on the applicant. The applicant has failed to demonstrate that when he retained the services of individuals to help him obtain permanent residency, he did not know that his applications and related documents included false material information. Accordingly, the AAO concurs with the director that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department 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

(b)(6)

Page 4

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.

The applicant has indicated that his family in the United States consists of his U.S. citizen siblings. The record does not reflect that the applicant has a U.S. citizen or lawful permanent resident parent or spouse, which are the required qualifying relatives for a waiver under section 212(i) of the Act. As the applicant has not met his burden to establish eligibility, the appeal will be dismissed.

ORDER: The appeal is dismissed.