(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: OFFICE: WASHINGTON D.C. FILE:

IN RE: AUG 0 8 2013

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under section under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship. He was also found inadmissible under section 212(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iv), for being a drug abuser or addict, and under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted a controlled substance violation,. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to live in the United States with his U.S. citizen spouse and son.

The Field Office Director found that the applicant was not eligible for a waiver under section 212(h) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The Field Office Director also denied the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) because no waiver exists for the inadmissibilities under sections 212(a)(6)(C)(ii) and 212(a)(1)(A)(iv) of the Act and because the applicant had not established he had been admitted or paroled into the United States as required by section 245(a) of the Act. *See Decisions of the Field Office Director,* dated October 26, 2012.

On appeal, counsel contests the inadmissibility findings and asserts that the evidence establishes that the applicant possessed less than 30 grams of marijuana. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed November 23, 2012 and received by the AAO on April 12, 2013.

As the applicant's Form I-485 was denied for failure to meet the statutory requirement that he was admitted or paroled into the United States, and, the AAO has no jurisdiction to review that finding, no purpose is served in reviewing the hardship claims related to the applicant's eligibility for a waiver of inadmissibility.[1] However, as counsel has raised several issues related to the applicant's inadmissibility and eligibility for a waiver, the AAO will examine each ground noted by the Field Office Director.

The record contains, but is not limited to: various immigration forms; statements by the applicant and the applicant's friends; arrest and criminal court documents; financial documents; employment documents; a house deed; country condition reports; marriage and birth certificates; and passport and identity documents. The entire record was reviewed and considered in rendering a decision on appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004).

---

[1] The AAO notes that the record contains an unadjudicated motion to reopen and reconsider the denial of the Form I-485.

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 (including section 274A) or any other Federal or State law is inadmissible.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found that the applicant made a false claim to U.S. citizenship during his arrest on January 14, 2005. Fingerprint records for the applicant's criminal history include the name and below that name, "Birth Place: Nigeria" and "Citizenship United States." The Field Office Director found that the fingerprint record established that the applicant had made a false claim to U.S. citizenship and was inadmissible under section 212(a)(6)(C)(ii) of the Act. In his affidavit the applicant explains his efforts to obtain police records regarding the incident to establish that he did not say he was a U.S. citizen with the name and submits a police record request as evidence. The Field Office Director found that the fingerprint record established that the applicant had made a false claim to U.S. citizenship and was inadmissible under section 212(a)(6)(C)(ii) of the Act. The applicant's fingerprint record without further evidence neither indicates that the applicant stated he was a U.S. citizen nor that he had the motive to falsely represent his citizenship for a benefit or purpose under the Act, Federal or State law. In addition, the disposition for the incident where he allegedly used the name lists an admitted alias, as the defendant. This adds credibility to the applicant's claim that there was a mistake at the police station when he was fingerprinted. The AAO finds that the record does not support a finding of a false claim to U.S. citizenship under section 212(a)(6)(C)(ii) of the Act and is thus not inadmissible under this section of law.

Section 212(a)(1)(A) of the Act provides, in pertinent part:

In General: Any alien… (iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, is inadmissible.

The record reflects that on July 19, 2011 a panel physician found the applicant had a Class A medical condition of substance abuse or addiction. *See I-693, Report of Medical Examination and Vaccination Record,* dated September 15, 2011. Based on this finding by the physician, the Field Office Director found the applicant to be inadmissible as a drug abuser or addict. On December 20, 2012 the same panel physician found that the applicant had a Class B medical condition of substance abuse or addiction in full remission. *See I-693, Report of Medical Examination and Vaccination Record,* December 20, 2012. The physician stated that the applicant had been in full remission of cannabis use for more than one year and last used marijuana in 2011. Based on this additional evidence, the AAO finds that the applicant is not a drug abuser or addict, and is not inadmissible under section 212(a)(1)(A)(iv) of the Act.

Section 212(a)(2) of the Act states in pertinent part:

> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> . . . .
>
> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
>
> . . . .
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United

> States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that on October 4, 2011, the Superior Court of the District of Columbia imposed an order of probation for 60 days and payment of $50 after the applicant pled guilty to a single offense of possession of marijuana. The court transcript of the proceedings indicates that at the time of the arrest, the applicant possessed marijuana in bags with the net weight of 5.3 grams and 3.3 grams and a marijuana plant of 0.35 grams, totaling 8.95 grams. As the amount of marijuana he possessed was less than 30 grams and his conviction was for a single offense of possession, the AAO finds that while the applicant remains inadmissible for committing a controlled substance violation under section 212(a)(2)(A)(i)(II) of the Act, the applicant is eligible to apply for a waiver under section 212(h) of the Act.

The Field Office Director found that the applicant had not submitted evidence of his entry to the United States and was therefore, statutorily ineligible to apply for adjustment of status under section 245(a). On motion to reopen and reconsider the Form I-485 counsel asserts that the applicant entered using a false passport.[2] As noted above, the AAO does not have jurisdiction to review the denial of the Form I-485 and therefore, the I-485 remains denied. As such, no purpose is served in determining whether extreme hardship to the applicant's qualifying relatives has been established. As there is no underlying application for adjustment of status the appeal of the denial of the waiver application must be dismissed.

In proceedings for application for waiver of inadmissibility under section 212(h) 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.

---

[2] If this claim is found to be true, the applicant may also be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact in order to obtain admission into the United States.