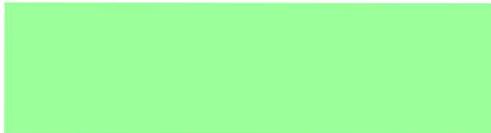


(b)(6)

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



U.S. Citizenship
and Immigration
Services



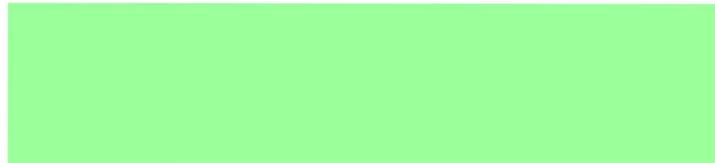
DATE: DEC 04 2013 Office: WASHINGTON, DC

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, DC. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted the prior AAO decision is withdrawn and the underlying appeal is sustained.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring immigration benefits by willfully misrepresenting material facts. The applicant's spouse is a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that his bar to admission would impose extreme hardship on his spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. The AAO found that the applicant established that his spouse would extreme hardship if he was found inadmissible. However, the AAO dismissed the appeal as a matter of discretion because it found that the applicant's adverse factors outweigh his favorable factors.

On motion, counsel asserts that the AAO erred in finding that the applicant assisted aliens in applying for immigration benefits to which they are not entitled, and the AAO erred in concluding that the applicant's adverse factors outweigh his favorable factors. The applicant submits additional evidence with the motion to support counsel's assertions.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support his claim, the requirements of a motion to reopen have been met and the motion to reopen will be granted.

The record includes but is not limited to, statements from the applicant's employers and work colleagues, statements from friends and family in support of the applicant, criminal-history search records, tax records, and documentation related to the applicant's employment. The entire record was reviewed and considered in rendering this decision.

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 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 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 record reflects that the applicant applied for and received temporary protected status (TPS) on several occasions by misrepresenting his date and manner of entry. The applicant therefore is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring immigration benefits by willfully misrepresenting material facts. The applicant does not contest his inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. Considering the evidence in the aggregate, the AAO found that the applicant established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both

forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The AAO previously noted as favorable factors the applicant's U.S. citizen spouse, the extreme hardship his spouse would experience if his waiver were not approved, and the letters of support submitted on his behalf. Favorable factors supported by evidence submitted with this motion include proof that he has no criminal record or traffic offenses and that he has paid his income taxes for the past 10 years.

In his letter submitted with his motion, the applicant states that he regrets his actions, he is a better person, he has learned from his mistakes, he does not have a criminal record and he tries to comply with tax regulations. The applicant also states that he took real-estate courses and received his realtor's license. The record includes certificates of professional training and statements from the applicant's employers and colleagues attesting to his professionalism and good character.

The record also includes statements from the applicant's pastor, family members and a neighbor about his good moral character.

The AAO noted in its previous decision that the applicant worked for [REDACTED] which was involved in filing fraudulent labor certification petitions with the Department of Labor and immigrant-worker petitions with USCIS. The AAO concluded that the record showed that the applicant assisted aliens with applying for immigration benefits to which they were not entitled. Counsel asserts on motion that the applicant was a low-level employee at [REDACTED] he worked as a receptionist, tax preparer and data-entry clerk; he did not hold management or supervisory positions; and he did not have authority to make decisions for the company. Counsel states that the applicant was not involved in any aspect of providing immigration services at [REDACTED] and did not assist anyone in applying for fraudulent immigration benefits.

Fredy R. Lopez-Ayala states that the applicant worked at [REDACTED] until December 31, 2010; the company ceased taking immigration and labor-certification cases on January 1, 2004, and since then it has specialized in tax preparation, accounting, payroll, business consulting and translations; the applicant's responsibilities included manning the front desk, customer service, tax preparation, document preparation and payroll processing; the applicant was never involved in advising customers how to complete immigration documents; the applicant collected data from the clients for the managers to determine whether the clients qualified for benefits; and the applicant was never arrested, charged or convicted as a member of a conspiracy to commit immigration fraud.

The record reflects that the [REDACTED] also known as [REDACTED] was sentenced in February 2008 to 27 months in prison and 2 years of supervised release on federal immigration fraud charges. Four other [REDACTED] employees named in media accounts of the investigation were sentenced for immigration fraud. The record does not reflect that the applicant was arrested or charged with immigration fraud at that time or since that time.

The unfavorable factors include the applicant's unauthorized employment, misrepresentations and period of unauthorized stay.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted. The prior decision of the AAO is withdrawn, and the underlying appeal is sustained.