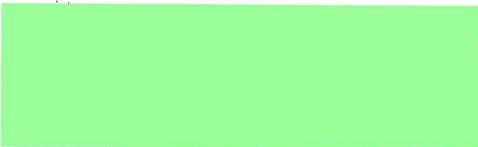




U.S. Citizenship
and Immigration
Services

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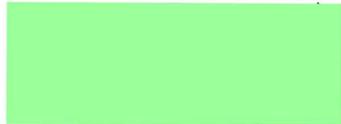


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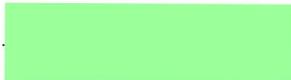
FEB 13 2013

Office: NORFOLK, VIRGINIA

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)

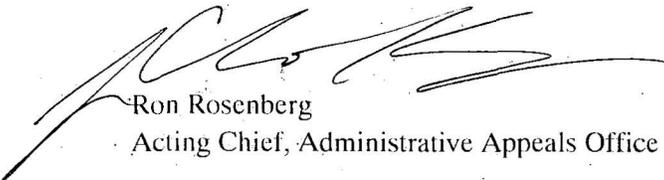
ON BEHALF OF APPLICANT:



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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The application for waiver of grounds of inadmissibility was denied by the Field Office Director, Norfolk, Virginia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is unnecessary. The matter will be returned to the Field Office Director for continued processing.

The applicant is a native and citizen of Niger 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 having procured admission to the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen spouse. *Decision of Field Office Director*, dated March 27, 2012.

On appeal, counsel asserts that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. *Brief on Appeal*, dated April 26, 2012.

On appeal, counsel submits a brief, a notarized affidavit from the applicant, copies of passport stamps and visas related to the applicant's trip to the United States, and photographs of the hospital where the applicant's financial sponsor was hospitalized in 1999. The record also includes, but is not limited to, a brief submitted previously, letters from the applicant and his former financial sponsor, and articles on country conditions in Niger, specifically, embezzlement at [REDACTED].

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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)(1) of the Act provides, in pertinent part:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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....

U.S. Citizenship and Immigration Services (USCIS) records show that the applicant entered the United States on November 4, 1999 as an F-1 student visa-holder. The applicant claims that his intention was to come to the United States to study at the time of admission. The applicant further claims that he was unable to do so because his financial sponsor fell ill two days before his arrival in the United States, he did not learn of his financial sponsor's sudden illness until after he arrived in the United States and his financial sponsor was hospitalized for over a month using a lot of his sponsor's financial resources for medical expenses. The applicant lastly claims that his financial sponsor's [REDACTED] account became inaccessible since it was discovered that a large amount of the [REDACTED] funds had been diverted or embezzled.

The applicant explains that he was unaware that his financial sponsor had fallen ill or was unable to financially support his studies when he left Niger. In support of these claims, the applicant attaches a notarized affidavit which explains that he visited his parents in Dosso, Niger the day before his departure from Niger on November 3, 1999 and with his travel schedule, did not learn of his financial sponsor's hospitalization until he had arrived in the United States. The record also includes various passport stamps which demonstrate that the applicant traveled from Niger to Morocco on November 3, 1999, had an overnight layover in Morocco, and finally traveled from Morocco to the United States on November 4, 1999. The applicant includes medical records of the financial sponsor which show that the sponsor was hospitalized from November 2, 1999 to December 17, 1999 and that he was prescribed a number of medications around the same time.

Regarding embezzlement at [REDACTED] the applicant submits country conditions articles documenting banking sector problems in Niger generally and discussing the government's placement of [REDACTED] under temporary supervised management on January 11, 2001 due to the embezzlement of more 519,000,000 CFA over a three to four year period. The record includes a letter from the financial sponsor explaining that due to health-related expenses and banking problems at [REDACTED] he was not able to fulfill his promise to financially support the applicant's studies. *Letter from [REDACTED] dated January 25, 2012.*

The record also includes a printout of an electronic mail message from the applicant to staff at the applicant's host university explaining that he did not obtain his student (F-1) visa until October 21, 1999, after the enrollment date listed on his initial Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status. The applicant requested the university reissue his Form I-20 with a later enrollment date so that he would not encounter any difficulties with U.S. immigration officials. The record contains copies of the petitioner's initial and re-issued Forms I-20, which support his claim that he intended to study in the United States at the time of his arrival.

The preponderance of the relevant evidence submitted below and on appeal shows that at the time of his entry into the United States, the applicant did not willfully misrepresent his intention to

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study at the university which issued his Form I-20. The record shows that events outside of the control and knowledge of the applicant at the time resulted in his inability to pursue his studies shortly after arriving in the United States. Those events are documented in the record and include the lengthy hospitalization of his financial sponsor, the depletion of the financial sponsor's funds on health-related bills, the embezzlement of funds at the financial sponsor's bank and the resultant unavailability of some of the financial sponsor's funds. The applicant is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act, for willful misrepresentation.

Because the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, he does not require a waiver under section 212(i) of the Act. The March 27, 2012 decision of the Field Office Director will be withdrawn. The appeal will be dismissed as the underlying waiver application is unnecessary because the applicant is not inadmissible.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary. The Field Office Director shall continue processing the applicant's Form I-485 adjustment application.