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



U.S. Citizenship
and Immigration
Services

[REDACTED]
DATE: **JAN 10 2013** OFFICE: DES MOINES, IA [REDACTED]

IN RE: [REDACTED]

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:
[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.

Thank you,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the Field Office Director, Des Moines, Iowa, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of Peru who has resided in the United States since 2000, when he was admitted as a nonimmigrant. The Field Office Director found he was 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 having used a false alien registration number and a false social security number to obtain employment. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 24, 2011.

On appeal, counsel for the applicant contends using a false alien registration number and a false social security card to obtain private employment does not render the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record includes, but is not limited to, copies of immigration decisions, documentation of criminal proceedings, evidence of birth, marriage, residence, and citizenship, other applications and petitions, and documentation of removal proceedings. 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:

- (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:

- (1) 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 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.

In denying the applicant's waiver application, the Field Office Director indicated that the applicant "admitted to fraudulently obtaining employment at the Marriot Hotel in West Des Moines, Iowa. Form I-9, Employment Eligibility Verification, indicates you used a false Alien Registration Number and a false social security number to obtain employment." *Decision of the Field Office Director*, dated September 24, 2011. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act based on this prior act.

Upon review of the record, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he does not require a waiver under section 212(i) of the Act. As discussed above, the record shows that the applicant used a false alien registration number and a false social security number to obtain employment. While he stated that he presented false information to his employer, he has not indicated that he presented that information to any other individual or organization, and the record does not suggest or support that he did so.

The legacy Immigration and Naturalization Service (INS) General Counsel's Office addressed in an April 30, 1991 published legal opinion the issue of whether an applicant who presents counterfeit documents in completing an Employment Eligibility Verification Form (Form I-9) is subject to inadmissibility for misrepresentation under former section 212(a)(19) (now section 212(a)(6)(C)(i)) of the Act. The legal opinion provides:

For two reasons, we conclude that an alien's false statements on Form I-9 do not render the alien subject to exclusion under Section 212(a)(19) of the Act. First, an alien who falsifies a Form I-9 does not make the false statements before a United States government official authorized to grant visas or other immigration benefits. Secondly, while the decision of the Service to grant an alien authority to accept employment is a benefit under the INA, an employer's decision to hire any particular individual involves a private employment contract. Thus, false statements on Form I-9 are not for the purpose of obtaining a benefit under the INA and, therefore, cannot form the basis for exclusion of an alien pursuant to Section 212(a)(19) of the Act.

Genco Op., Paul W. Virtue, Act. Gen. Co., *Penalties for misrepresentations by an unauthorized alien on an Employment Eligibility Verification Form (Form I-9)*, No. 91-39, 2 (April 30, 1991).

Similarly, the Board of Immigration Appeals (BIA) concurring opinion in *Matter of Cervantes-Gonzalez* noted:

The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act. Although the use or possession of such document is punishable under section 274C of the Act, 8 U.S.C. § 1324c (1994 & Supp. II 1996), working in the United States is not 'a benefit provided under this Act,' and we have specifically held that a violation of section 274C and fraud or misrepresentation under section

212(a)(6)(C)(i) of the Act are not equivalent.

22 I&N Dec. 560, 571 (BIA 1999) (citations omitted).

The United States Courts of Appeals for the Tenth and Eighth Circuits have concluded that employment can be properly deemed a “purpose or benefit under the Act” in the context of applying section 212(a)(6)(C)(ii) of the Act. Specifically, when an applicant has made a false claim of U.S. citizenship for the purpose of obtaining employment with a private employer, he may properly be deemed inadmissible under section 212(a)(6)(C)(ii) of the Act. *Rogriguez v. Mukasey*, 519 F.3d 773, 777 (8th Cir. 2008)(stating that “the explicit reference to [U.S.C.] § 1324a [section 274A of the Act] in [U.S.C.] § 1182(a)(6)(C)(ii)(I) [section 212(a)(6)(C)(ii)(I) of the Act] indicates that private employment is a purpose or benefit of the Act.”); *Kechkar v. Gonzales*, 500 F.3d 1080, 1084 (10th Cir. 2007)(finding that “[i]t appears self-evident that an alien who misrepresents citizenship to obtain private employment does so, at the very least, for the purpose of evading § 1324a(a)(1)(A)'s prohibition on a person or other entity knowingly hiring aliens who are not authorized to work in this country.”).

However, these decisions are limited to an analysis of the application of section 212(a)(6)(C)(ii) of the Act, and the conclusions are based on the reference to section 274A of the Act found in section 212(a)(6)(C)(ii) of the Act. Section 274A of the Act renders it unlawful for an employer to hire an alien without authorization from USCIS, thus section 212(a)(6)(C)(ii) of the Act specifically contemplates false claims of U.S. citizenship for the purpose of employment in the United States. Section 212(a)(6)(C)(i) of the Act is more limited in scope than section 212(a)(6)(C)(ii) of the Act, as it does not reference section 274A of the Act and it does not reach false representations made for purposes or benefits under other Federal or State laws. *See* section 212(a)(6)(C)(ii) of the Act. Thus, the finding of the BIA and Federal courts that employment is a “purpose or benefit under the Act” in the context of the application of section 212(a)(6)(C)(ii) of the Act does not constitute a finding that employment is also a “benefit under the Act” as contemplated by section 212(a)(6)(C)(i) of the Act.

Based on the foregoing, the AAO finds that the April 30, 1991 legal opinion of legacy INS General Counsel’s Office and the concurring opinion of the BIA in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 571, continue to serve as current guidance for the application of section 212(a)(6)(C)(i) of the Act.

In the present matter, the applicant committed misrepresentation by presenting a false alien registration number and a false social security number to a private employer, not a U.S. government official authorized to grant visas or other immigration benefits. He did so for the purpose of obtaining employment, which has not been determined to be a “benefit provided under [the] Act” as contemplated by section 212(a)(6)(C)(i) of the Act. Therefore, the record fails to establish that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act. *See Matter of Y-G*, 20 I&N Dec. 794, 797-98 (BIA 1994)(finding that an individual did not commit fraud or misrepresentation as contemplated by section 212(a)(6)(C)(i) of the Act because he voluntarily revealed that he possessed fraudulent travel documents upon first encountering U.S. immigration

officers); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 571. The applicant has not made a false claim of U.S. citizenship, thus he is not inadmissible under section 212(a)(6)(C)(ii) of the Act. Accordingly, the applicant is not inadmissible and the Field Office Director's findings regarding a misrepresentation under section 212(a)(6)(C) of the Act are withdrawn. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

ORDER: The applicant's waiver application is declared unnecessary and the appeal is dismissed.