

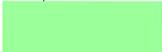


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 11 2013** Office: NEW ORLEANS

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Ground 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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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 Acting Field Office Director, New Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision.

The applicant is a native and citizen of India 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 through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 wife.

In a decision dated October 29, 2010, the director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his U.S. citizen wife would experience extreme hardship as a consequence of his inadmissibility.

On appeal, counsel for the applicant asserts that the applicant's U.S. citizen wife experiences medical, psychological, financial and emotional hardships, which would be exacerbated in the event of separation from the applicant and in the event of relocation to India.

The record includes, but is not limited to: counsel's brief; medical reports; a psychological evaluation of the applicant's U.S. citizen wife; a marriage certificate; copies of bank statements and medical bills; and documentation regarding the applicant's criminal history.

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 has been 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.

The record indicates that on July 22, 2009, the director issued a Notice of Intent to Deny the applicant's Adjustment of Status application, noting that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1152(a)(6)(C)(i), and had not filed the corresponding Form I-601 waiver application. In the notice, the director found that in the previously filed Forms I-485 and I-687, the applicant provided false information regarding his prior entries and periods of unlawful stay in the United States. The record shows that the applicant filed the above-referenced forms under the legalization provisions of the Legal Immigration Family Equity (LIFE) Act. The AAO notes, however, that USCIS is statutorily precluded from considering information contained in a legalization (LIFE Act) file for any purpose other than a legalization determination.

Section 245A(c)(5) of the Act provides, in pertinent part, that:

(A) In general.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

Accordingly, the documentary evidence concerning the contradicting and false information provided in the applicant's prior adjustment of status applications under the legalization provisions of the LIFE Act, and his submission of fraudulent documents to support those applications, may not be used as a basis for finding inadmissibility under section 212(a)(6)(C)(i) of the Act. Here, a review of the record does not show that the director relied on any other evidence or instances of fraud or material misrepresentations by the applicant that sufficiently establishes inadmissibility requiring the applicant to file a Form I-601 waiver application. In addition, the applicant has not been convicted for false statements in that or any other application.

The AAO notes that the record also includes a report from the FBI regarding the applicant's October 27, 1995 grand theft conviction in Turlock, California. The AAO remands this matter to the director to determine, based upon the documents in the file not barred by the LIFE Act's special confidentiality provisions, the applicant's admissibility. Should the director determine that the applicant is inadmissible to the United States under any additional grounds listed in section 212 of the Act, 8 U.S.C. § 1182(a), the director will provide the applicant an opportunity to seek the corresponding inadmissibility waiver and issue a decision addressing the merits of the waiver application. If that decision is adverse to the applicant, it will be certified for review to the AAO in accordance with the procedure set forth in 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the Field Office Director for further action in accordance with this decision.