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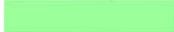


**U.S. Citizenship  
and Immigration  
Services**



Date: **MAR 25 2013**

Office: NEWARK

FILE: 

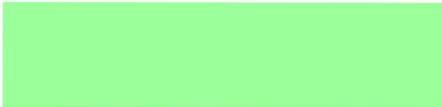
IN RE :

APPLICANT: 

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, 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 any 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,

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

Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil who was found to be 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), procuring admission to the United States through fraud or misrepresentation. The record reflects the applicant entered the United States in December 2000 with a fraudulent B-2 visitor visa. The applicant 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 to remain in the United States.

The Field Office Director found that the applicant failed to establish that he has a qualifying relative and is thus ineligible for the waiver sought. The application was denied accordingly. *See Decision of the Field Office Director* dated July 25, 2012.

On appeal counsel for the applicant contends the applicant believed the visa used to enter the United States was valid. With the appeal counsel submits a brief and declarations from the applicant and his U.S. citizen step-daughter. The record also contains a medical and psychological evaluation for the step-daughter. 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 or....

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility.

The Field Office Director found that the applicant is inadmissible for misrepresenting a material fact to procure admission to the United States. The record reflects that the applicant entered the United States with a fraudulent B-2 visitor visa. The applicant states that he had never gone to a U.S. consulate

seeking a visa, but rather to a travel agency. Service records show that the visa used by the applicant to enter the United States had been issued to another person. Based on this information the Field Office Director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal counsel asserts that the applicant and his spouse entered the United States using visas they believed valid. Counsel contends the applicant's use of a travel agency to apply for the visa was a standard method for Brazilians, that the visas they received were in their names and entered into their passports, and that the fees they paid were inconsistent with the costs of fraudulent documents.

In his declaration the applicant contends he was unaware the visas were not real until informed by an immigration officer at his interview for adjustment of status. The applicant stated that he used a travel agency to apply for a visa, paid a fee which seemed consistent with other fees, and gave the agency his passport to take for U.S. consular approval, which he believed was the normal operation. He asserts that the agency had been successfully used by his step-daughter's uncle and family for the same type of visa. He further states he has attempted to contact the agency but learned it has gone out of business.

The AAO notes that at his adjustment of status interview the applicant provided a sworn statement indicating he had not gone to a U.S. consulate for a visa, but rather to a travel agency, and did not realize the visa he received was fraudulent.

The issue becomes whether the applicant's actions constitute a willful misrepresentation of a material fact that would render her inadmissible under section 212(a)(6)(C)(i) of the Act. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 US 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

Here the applicant's spouse had been denied a visa making her aware that the U.S. consulate had found her ineligible for the benefit sought, in this case a visitor visa. The applicant and his spouse then used a travel agency with the applicant not contacting a U.S. consulate. The applicant and his spouse then presented their passports with visas provided through a travel agency to U.S. officials to gain admission to the United States. The applicant asserts he did not know the visa was fraudulent, but counsel has not submitted evidence to overcome the finding of the Field Office Director that the applicant is inadmissible for misrepresentation. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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. In this case the applicant asserts hardship to his U.S.

(b)(5)

Page 4

citizen step-daughter. However his step-daughter is not a qualifying relative as defined under section 212(i) of the Act.

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