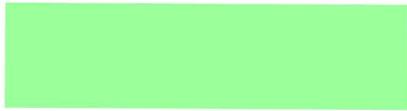




**U.S. Citizenship
and Immigration
Services**

(b)(6)



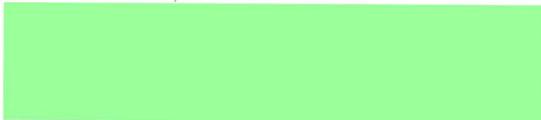
DATE: **OCT 01 2013** OFFICE: BALTIMORE, MD

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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Maryland, and a subsequent appeal was rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the application remains denied.

The applicant is a native and citizen of Mexico who has resided in the United States since February 7, 1991, when he entered the United States without inspection. The applicant was found to have subsequently obtained an employment authorization document through fraud or willful misrepresentation. He 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), for having procured a benefit under the Act through fraud or misrepresentation. The applicant is the beneficiary of an approved I-140 Immigrant Petition for Alien Worker. 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.

The District Director concluded that the applicant did not have a qualifying relative through which he could obtain a waiver of inadmissibility and denied the application accordingly. *See I-601 decision of District Director* dated September 13, 2012. The applicant's I-485 application was denied based on his inadmissibility under section 212(a)(6)(C)(i) of the Act. *See I-485 decision of District Director* dated September 13, 2012.

The AAO rejected the applicant's subsequent appeal, finding the applicant failed to timely file the appeal, and that it did not have jurisdiction over an appeal of an I-485 application. *See AAO decision*, March 29, 2013.

On motion, counsel submits briefs in support. Therein, counsel contends the applicant timely filed the initial appeal according to the District Director's directions, and that the applicant indicated in his appeal package that he was appealing the District Director's finding on inadmissibility under section 212(a)(6)(C)(i) of the Act. Counsel moreover asserts that the applicant is not inadmissible, as the applicant did not make any material misrepresentations or fraudulent statements to a U.S. government official.

The record includes, but is not limited to, the documents listed above, statements from the applicant, letters from family and friends, other applications and petitions, evidence of birth, marriage, residence, and citizenship, and documentation of immigration 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 the present case, the District Director found the applicant fraudulently obtained work authorization documents. In an affidavit, the applicant explains he entered the United States without inspection on February 7, 1991, and he subsequently contacted an organization named [REDACTED] to obtain assistance with normalizing his immigration status and obtaining a work permit. The applicant states he was assisted by a Guatemalan couple who have since gone to jail for immigration fraud. He indicates that he paid the couple \$500, and gave them his passport, his birth certificate, and two passport photos so he could obtain a work permit. The applicant adds that on January 14, 1992, [REDACTED] took him to immigration offices in Arlington, Virginia and then in Baltimore, Maryland. He explains that in Baltimore the applicant was called by an immigration officer, his photo was taken, he was handed a work authorization card, and he was asked to sign a receipt.

Counsel contends the applicant had no contact with a U.S. government official at the time he obtained his initial employment authorization card, and consequently, he cannot be inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact or fraud. Fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). The record reflects, however, that the applicant submitted a Form I-589 Application for Asylum to government officials in order to obtain an employment authorization card.

The record reflects that on October 10, 1991, the applicant, under a different alien registration number, but using his own name, date of birth, birthplace, and citizenship, submitted to the legacy INS a Form I-589, Application for Asylum and a Form I-765, Application for Employment Authorization. The applicant signed both applications, attesting that they were true and correct to the best of his knowledge and belief. In the asylum application, the applicant indicated he was persecuted by a group of men hired by the [REDACTED] agency, and that he was physically assaulted and threatened. See *Form I-589 Application for Asylum*, October 10, 1991. Based on this pending asylum application, the record reflects that the applicant obtained an employment authorization document. The applicant failed to appear for his asylum interview, and in the 23 years since he filed the asylum application, he has not mentioned this application or made any other claims of persecution. The applicant has not met his burden to prove that the information in the asylum application was correct, that he intended to obtain asylum status when he filed his

asylum application or that his asylum application was for any purpose other than to obtain a work permit.

Though the applicant claims [REDACTED] assisted him with the process, the record does not reflect that [REDACTED] filed these applications on his behalf. The applicant's Form I-589 appears to have been filed by the applicant alone, and his Form I-765 was prepared by [REDACTED] Maryland. The record contains no evidence to indicate that representatives from [REDACTED] have been convicted of immigration fraud.

Based on the evidence of record, the applicant obtained an employment authorization card from U.S. government officials by filing a fraudulent asylum application. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a benefit under the Act through fraud or misrepresentation.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant indicates on the Form I-601 application that his lawful permanent resident brother is his qualifying relative for purposes of this waiver, and that he also has U.S. citizen children. Congress did not include hardship to an alien's children or siblings as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Only hardship to an applicant's U.S. Citizen or lawful permanent resident parent or spouse can be considered in an analysis of extreme hardship for a waiver of inadmissibility under section 212(i) of the Act. In the present case, the applicant has not shown that he has a qualifying relative required for a waiver. Without a qualifying relative, the AAO cannot find that the applicant has demonstrated the existence of extreme hardship to a qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether he merits a waiver as a matter of discretion.

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 not been met. Accordingly, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.