

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: **DEC 01 2014** Office: CHARLESTON, SC [REDACTED]

IN RE: Applicant: [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 (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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg for".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Charleston, South Carolina. The matter 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 Colombia 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 seeking to procure an immigration benefit through fraud or misrepresentation. As such, the applicant requires 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 legal permanent resident mother and U.S. citizen son.

The Field Office Director found that the applicant did not establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. She denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated March 11, 2014.

On appeal, counsel indicates that additional documentation supports approving the waiver application.

In support of the waiver application, the record includes affidavits and letters from the applicant, his mother, his sisters, and his son and their accompanying identification documentation; medical documentation regarding the applicant's mother; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that on November 11, 1988, the applicant filed an Application for Temporary Resident Status as a Special Agricultural Worker (Form I-700) that subsequently was denied. The record also reflects that in 2014, the Field Office Director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having paid between \$800 and \$900 in 1988 to procure a permanent resident card in connection with this specific application.

Section 210(b) of the Act, 8 U.S.C. § 1160(b)(6), - Special agricultural workers, provides in pertinent part:

(6) Confidentiality of Information. -

(A) In general.-Except as provided in this paragraph, neither the Attorney General [now Secretary, Department of Homeland Security (Secretary)], 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, including a determination under subsection (a)(3)(B), or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual 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, to examine individual applications.

(B) Required disclosures.-The [Secretary] shall provide 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) 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.

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

(7) Penalties for false statements in applications.-

(A) Criminal penalty.-Whoever-

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, 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, or

(ii) creates or supplies a false writing or document for use in making such

an application, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.-An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

Although the applicant indicates on his Form I-601 that he had filed an earlier application that “turned out to be fake,” the record reflects that he filed Form I-601 and made this statement only after his interview related to his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). At that interview the record reflects that the interviewing officer specifically questioned him about fraud related to his prior legalization application. The record contains no basis permitting usage of the information in the applicant’s legalization application to support a finding of misrepresentation in connection with his current Form I-485. Under these circumstances his sworn statement and Form I-601 are not independent sources that would support concluding he committed fraud or willful misrepresentation in connection with his legalization application. *See Uddin v. Mayorkas*, 862 F.Supp.2d 391, 404 (E.D.Pa. 2012) (confidentiality provision provides that the application process itself cannot be used as a means to deny adjustment of status, although information obtained from an independent source may be used as grounds for a denial).

In the present case, the record does not reflect that the applicant engaged in fraud or made a material misrepresentation on any other application except on his application for special agricultural worker status in 1988. We thus find that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act will not be addressed.

The appeal will be dismissed because the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and an application for a waiver of inadmissibility is therefore not required.

ORDER: The appeal is dismissed because the underlying waiver application is unnecessary.