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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

DATE: DEC 17 2014 OFFICE: TAMPA 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, Florida, and came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the matter and it is now before the AAO on certification. The appeal is dismissed as unnecessary.

The applicant is a native and citizen of Trinidad and Tobago 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 procuring a visa to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 2, 2011.

On appeal, counsel stated that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and in the alternative, that he established that his U.S. citizen spouse will suffer from extreme hardship if he is not admitted as a permanent resident. *Petitioner/Appellant's Brief*, undated.

Upon review of the applicant's appeal, we found that the record lacked a sworn statement or other official record of the applicant's statements under oath at his adjustment of status interview and nonimmigrant visa interview. We also noted that the applicant provided no corroborating evidence to support his claim that he did not misrepresent material facts or commit fraud for an immigration benefit. We remanded the case to the Field Office Director for further findings in the matter, as the record included insufficient evidence to find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. *AAO Decision*, dated July 31, 2012.

On 2013, an officer at the U.S. Citizenship and Immigration Service's (USCIS) Tampa Field Office interviewed the applicant under oath and prepared a written record of the questions and answers. The Field Office Director subsequently found that that the record establishes that the applicant obtained a nonimmigrant B-2 visa by willfully misrepresenting material facts and that he failed to establish extreme hardship to a qualifying relative. The case was certified to us for review. *Form I-290C,* dated August 28, 2014. The applicant has not submitted a brief or additional evidence with this certification.

The record includes, but is not limited to, legal arguments and statements by counsel; statements by the applicant, his spouse, children, other family members, and friends; financial records for the applicant and his spouse; medical records for the applicant's child; photographs of the applicant and his family; and records concerning the applicant's arrests and immigration history in the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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:

> (1) The Attorney General [now Secretary of the Department of Homeland Security (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 Field Office Director, in her 2011 decision, found that the applicant "obtained a visa by fraud," based on his testimony at his interview on 2010. In her 2011 decision, the Field Office Director explained that the applicant testified under oath that he knew someone connected to a musical group that was traveling to the United States, and that although he was not a musician or member of the group, he asked his contact to add his name to the list of individuals traveling with the group. The record indicates that the visitor visa in question contains the annotation "Cultural Tour." According to the Field Office Director's 2011 decision, the applicant admitted under oath that he did not travel to the United States with the musical group, did not travel with the musical group within the United States, and did not take part in any activities related to the musical group in the United States. As a result the Field Office Director, after consultation with the U.S. Department of State, concluded that the applicant obtained the visitor visa by fraud and was inadmissible under section 212(a)(6)(C) of the Act.

On appeal, counsel stated that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, as the applicant intended to participate in the cultural tour for which the visitor visa was granted. On appeal, the applicant stated that he was working as a jewelry designer and that one of his clients invited him to join the cultural tour; he did not obtain the visa himself; the client obtained the visa on his behalf; and he intended to participate in the tour, selling jewelry, but he was never contacted by the client or group after arriving in the United States.

We noted in our July 31, 2012 decision that the file includes no sworn statement or official record of the applicant's statements under oath made at his adjustment of status interview or at a nonimmigrant visa interview. We found that as the record did not contain documentation of the applicant's statements under oath regarding his intention when obtaining the visitor visa and when entering the United States with that visa, there was insufficient evidence to support a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

The applicant's 2013 sworn statement reflects that a USCIS officer questioned him about his intention when he obtained his visa at the Port of Spain consular office. The applicant responded that he did not go to the embassy for his visa. In response to the officer's follow-up questions, he stated that he used to craft jewelry and a regular client asked if he wanted to come to America; the client brought a form for him to fill out; he does not remember the client's name; he does not remember the conversation he had with the U.S. immigration officer upon arrival at the airport but believes he would have said he "came for a cultural trip to make jewelry"; he was supposed to receive a call in Atlanta to tell him where to go for the event but did not receive a call; he was supposed to sell crafts; and his intention was to "sell jewelry, make some money, and go back home" to start a business.

At the time of our July 31, 2012 decision, the record included insufficient evidence to find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. The new evidence added to the record after our 2012 decision is the applicant's 2013 sworn statement, which does not corroborate the Field Office Director's claim that the applicant willfully misrepresented material facts or committed fraud for an immigration benefit. Instead, the applicant's responses to questions in his 2013 sworn statement are consistent with his previously submitted and documented statements.

As such, the record lacks sufficient evidence to find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the applicant is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and the waiver application is unnecessary.

ORDER: The appeal is dismissed because the applicant is not inadmissible to the United States and the waiver application is unnecessary.