



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: JAN 13 2014

Office: ATLANTA [REDACTED]

IN RE: [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. 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,

*R. Rosenberg*

Ron Rosenberg,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Atlanta, Georgia, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i). The applicant asserts that he is not inadmissible but, alternatively, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), June 29, 2007. On appeal, the AAO found the applicant inadmissible due to his misrepresentations and that, as he does not have a qualifying relative under section 212(i) of the Act, determined he failed to establish prima facie eligibility for a waiver. *AAO Decision (on Appeal)*, October 22, 2010. On the initial motion, the AAO found counsel's assertion that the applicant was not responsible for misrepresentation to lack merit and that the applicant had failed to establish that he has a qualifying relative. *AAO Decision*, August 13, 2012. The AAO dismissed a second motion finding that it failed to meet the requirements of a motion to reconsider. *AAO Decision*, July 5, 2013.

On a third motion, counsel continues to assert that a former attorney submitted the fraudulent documents used by applicant to obtain his visa, claims that the AAO failed to consider evidence provided in support of the first motion, and again submits evidence claimed not to be available at the time of the applicant's appeal.

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

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.

A forensic document report on record states that the applicant probably did not write the cursive entries in question. This report, however, is insufficient to establish that he was unaware a fraudulent adjustment of status application (Form I-485), underlying spousal immigrant petition (Form I-130) with supporting birth and marriage certificates, and an application for a work permit (EAD) had been submitted on his behalf. First, the document examiner qualifies her conclusion saying that the handwriting analysis "falls short of the 'virtually certain' degree of confidence." *Forensic Document Examination Report (Forensic Report)*, September 2, 2012. The examiner explains that the "probably did not" language is used in accordance with professional standards to indicate that, while that the evidence embodied in the handwriting points to the stated opinion, it is not conclusive, due to the limited amount of comparable cursive writing samples from the time period of the questioned document.

Second, even were the applicant able to establish he did not sign the forms, this showing would not prove that he was not complicit in the fraudulent submissions. The record reflects that fraudulent forms other than those bearing the applicant's signature are at issue. The AAO has already determined present counsel's assertions that former counsel had been convicted of immigration fraud and imprisoned to be unsupported by the record,<sup>1</sup> and also found it implausible that the applicant hired the former attorney to file for his immigration benefits but that he did not play any role in signing or submitting any application or petition. The AAO observes that former counsel likely could not have fabricated the personal information and details in the fraudulent application and petition without the applicant's input. *See AAO Decision*, August 13, 2012.

We find that the applicant has failed to meet his burden under the Act of establishing that he did not knowingly procure an immigration benefit (a work permit) or seek to procure an immigration benefit through fraud or misrepresentation. Despite the forensic report, the record does not contain sufficient evidence for us to conclude that the applicant did not participate in preparing the fraudulent application for adjustment of status, which was the basis for the employment authorization document issued to him. As he is thus inadmissible under section 212(a)(6)(C)(i) of the Act, he requires a waiver of inadmissibility.

Section 212(i)(1) of the Act provides:

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 contains no evidence that the applicant has a qualifying relative under section 212(i)(1) of the Act. He is therefore ineligible for a waiver of inadmissibility.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the AAO's prior decision will be affirmed.

**ORDER:** The motion is granted. The prior decision of the AAO is affirmed.

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<sup>1</sup> The 2006 disciplinary order suspends former counsel from practicing law for failing to pay annual registration fees. It appears to be unrelated to the applicant or any findings of fraud regarding the 1995 adjustment application.