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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

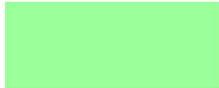


U.S. Citizenship
and Immigration
Services

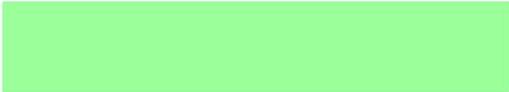


DATE: **JUN 25 2014**

Office: LOS ANGELES

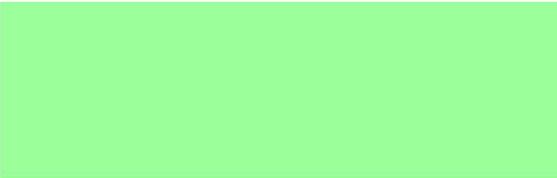
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IN RE:

Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the 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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and a citizen of Nigeria, 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 or attempting to procure an immigration benefit by fraud or willful misrepresentation. He seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, July 19, 2013.

On appeal, counsel contends that the applicant is not inadmissible, but asserts alternatively that USCIS erred in finding he provided insufficient evidence his wife would experience extreme hardship if he is unable to reside in the United States. The record contains documentation including, but not limited to: hardship statements; financial information, such as tax and business documents, bank statements, a lease, and utility bills; birth and marriage certificates; photographs; and prior immigrant benefits applications. The entire record was reviewed and considered in rendering this decision.

The record reflects that the applicant entered the United States on August 14, 2001 in F1 student status. Thereafter, according to the record, he married the qualifying relative herein and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 30, 2011 based on a concurrently-filed, spousal immigrant petition. The field office director determined that in December 2005 the applicant filed an Application for Status as a Temporary Resident Under Section 245A (Form I-687) using an alias and altered date of birth and committed fraud or willful misrepresentation by not revealing on his Form I-485 or at his February 1, 2012 adjustment interview having previously filed the Form I-687.

Counsel claims that the applicant is not inadmissible, asserts he did not willfully misrepresent having previously sought an immigration benefit, and states that his failure to divulge the prior applications was due to not understanding the meaning of immigration benefit. We note that Section 291 of the Act places upon the applicant the burden to establish entitlement to the benefit claimed and is not inadmissible.

Sec.245a, 8U.S.C.1255a. Adjustment of status of certain entrants before January 1, 1982, to that of a person admitted for lawful residence, states in pertinent part:

(c)(5) Confidentiality of information.-

(A) In general.-Except as provided in this paragraph, neither the Attorney General, 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, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

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

(B) Required disclosures.-The Attorney General shall provide the 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) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) 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.

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

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, 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, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

The decision of the field office director notes that during his interview for adjustment of status, the applicant denied having filed for any other benefit with USCIS and states, "However, the record reflects that you applied for a benefit from this Service by filing form I-687 under another identity on December 21, 2005." Under section 245A(c)(5), 8 U.S.C. § 1255a(c)(5), the information in an applicant's Form I-687 may not be considered for any purpose besides the determination on the legalization application itself. Although the applicant's Form I-601 waiver application contains his statement about the filing of the fraudulent Form I-687, the record reflects that he filed for the waiver only when the field office director advised him to do so after noting both the existence of the legalization application and the fact it contained false information. *See Record of Sworn Statement in Administrative Proceedings (Form I-877)*, February 1, 2012. The record contains no basis permitting usage of the information in the legalization application to support a finding of misrepresentation in connection with his application to adjust status. Further, although the applicant denied having filed an application for a prior immigration benefit, without considering the false information on the applicant's Form I-687, the record does not establish that this constituted a material misrepresentation, as the mere filing of the Form I-687 would not render the applicant ineligible for adjustment of status. In addition, there is no independent source for concluding he committed fraud or willful misrepresentation in connection with his adjustment application. *See Uddin v. Mayorkas*, 862 F.Supp.2d 391, 404 (E.D.Pa. 2012) (confidentiality provision governing amnesty applications 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, a review of the record reflects no indication that the applicant engaged in fraud or made a material misrepresentation on any application other than his application for legalization. In addition, the applicant has not been convicted for false statements in that or any other application. 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.

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NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed, and the application for waiver of inadmissibility is declared unnecessary.