



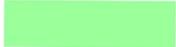
U.S. Citizenship  
and Immigration  
Services

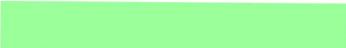
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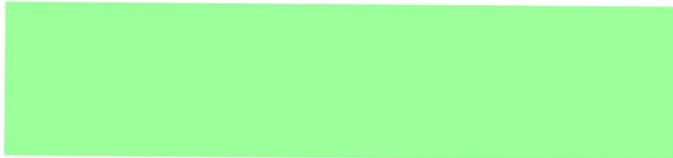
Office: WASHINGTON FIELD OFFICE

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 Washington Field Office Director, Fairfax, Virginia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the underlying waiver application is unnecessary.

The record reflects that the applicant is a native and citizen of the Philippines who 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 seeking to procure admission to the United States or another benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 7, 2014.

On appeal the applicant contends that USCIS erred in requiring the applicant to submit a waiver application as he never committed a willful misrepresentation to USCIS or an immigration officer for an immigration benefit. With the appeal the applicant submits a declaration and copies of AAO decisions in unrelated cases. The record includes statements from the applicant and his spouse, financial documentation, and evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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.

- (ii) Falsely Claiming Citizenship

- (I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

....

The field office director determined that the applicant is inadmissible under section 212(a)(6)(C)(i), because he used a fraudulent passport with a fraudulent I-551 temporary alien registration stamp to obtain a social security number and then gain employment, obtain state issued identification, establish credit accounts, purchase property, and pay taxes.<sup>1</sup> The applicant asserts on appeal that using an assumed name and passport and social security number to obtain employment does not make the applicant inadmissible because he never committed a willful misrepresentation to USCIS or an immigration officer for an immigration benefit. The applicant cites legal determinations and the U.S. Department of State Foreign Affairs Manual in support of the assertion. The applicant further asserts that the applicant entered the United States in 1991 with a valid passport under his real name with a valid visitor visa issued by a U.S. Embassy. The applicant contends that obtaining a false passport to get a social security number is not the type of misrepresentation that renders the applicant inadmissible under section 212(a)(6)(C) of the INA.

In his declaration the applicant states that he entered the United States on October 16, 1991, with a valid visitor visa and then applied for asylum under the suggestion of an attorney. The applicant states that when he later received an asylum interview notice the attorney advised that he not appear because he would “likely be asked to go home” and that he should obtain a passport under an assumed name. The applicant states that he never presented the fictitious passport to the immigration service. In a 2007 sworn statement before an immigration officer the applicant asserted that he obtained the fraudulent passport in 1996 after the attorney advised him to do so because asylum applicants were being deported. The applicant further stated that he had never claimed to be a U.S. citizen, indicated that he was permanent resident, or attempted to obtain a temporary admission stamp at an immigration office. The record reflects that the applicant submitted a Request for Asylum (Form I-589) in 1991 with the application administratively closed for not appearing at the interview.

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). In order for the applicant to be inadmissible under section 212(a)(6) of the Act, the applicant’s misrepresentations not only must be willful, but they must be material. It is also well established that 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).

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<sup>1</sup> The decision of the field office director indicates that the applicant obtained work authorization, however there is no evidence in the record that the applicant applied for or received work authorization using the name or alien number associated with the fraudulent passport or I-551 stamp that it contained. The record does reflect that on multiple occasions the applicant filed an Application for Employment Authorization (Form I-765) and obtained an Employment Authorization Card with his correct name and alien number.

Here the record fails to establish that the applicant sought to procure or received an immigration benefit based on a material misrepresentation made either to a consular officer or a USCIS officer. The record shows that the applicant entered the United States with a valid passport and visa and that he later used a fraudulent passport and I-551 stamp to obtain a social security number in order to gain employment, and that he subsequently used that false identity to obtain a state-issued identity card, file taxes, make purchases, and establish credit. We find that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he does not require a waiver under section 212(i) of the Act.

The Board of Immigration Appeals (BIA) concurring opinion in *Matter of Cervantes-Gonzalez* noted:

The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act. Although the use or possession of such document is punishable under section 274C of the Act, 8 U.S.C. § 1324c (1994 & Supp. II 1996), working in the United States is not 'a benefit provided under this Act,' and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

22 I&N Dec. 560, 571 (BIA 1999)(citations omitted).

The United States Courts of Appeals for the Tenth and Eighth Circuits have concluded that employment can be properly deemed a "purpose or benefit under the Act" in the context of applying section 212(a)(6)(C)(ii) of the Act. Specifically, when an applicant has made a false claim of U.S. citizenship for the purpose of obtaining employment with a private employer, he may properly be deemed inadmissible under section 212(a)(6)(C)(ii) of the Act. *Rogriguez v. Mukasey*, 519 F.3d 773, 777 (8th Cir. 2008)(stating that "the explicit reference to [U.S.C.] § 1324a [section 274A of the Act] in [U.S.C.] § 1182(a)(6)(C)(ii)(I) [section 212(a)(6)(C)(ii)(I) of the Act] indicates that private employment is a purpose or benefit of the Act."); *Kechkar v. Gonzales*, 500 F.3d 1080, 1084 (10th Cir. 2007)(finding that "[i]t appears self-evident that an alien who misrepresents citizenship to obtain private employment does so, at the very least, for the purpose of evading § 1324a(a)(1)(A)'s prohibition on a person or other entity knowingly hiring aliens who are not authorized to work in this country.").

However, these decisions are limited to an analysis of the application of section 212(a)(6)(C)(ii) of the Act, and the conclusions are based on the reference to section 274A of the Act found in section 212(a)(6)(C)(ii) of the Act. Section 274A of the Act renders it unlawful for an employer to hire an alien without authorization from USCIS, thus section 212(a)(6)(C)(ii) of the Act specifically contemplates false claims of U.S. citizenship for the purpose of employment in the United States.

Section 212(a)(6)(C)(i) of the Act is more limited in scope than section 212(a)(6)(C)(ii) of the Act, as it does not reference section 274A of the Act and it does not reach false representations made for purposes or benefits under other Federal or State laws. *See* section 212(a)(6)(C)(ii) of the Act. Thus, the finding of the BIA and Federal courts that employment is a “purpose or benefit under the Act” in the context of the application of section 212(a)(6)(C)(ii) of the Act does not constitute a finding that employment is also a “benefit under the Act” as contemplated by section 212(a)(6)(C)(i) of the Act.

In the present matter, the applicant did not commit misrepresentation by presenting a lawful permanent resident stamp to a U.S. government official authorized to grant visas or other immigration benefits. He used the stamp for the purpose of obtaining employment, which has not been determined to be a “benefit provided under [the] Act” as contemplated by section 212(a)(6)(C)(i) of the Act. Therefore, the record fails to establish that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act. *See Matter of Y-G*, 20 I&N Dec. 794, 797-98 (BIA 1994)(finding that an individual did not commit fraud or misrepresentation as contemplated by section 212(a)(6)(C)(i) of the Act because he voluntarily revealed that he possessed fraudulent travel documents upon first encountering U.S. immigration officers); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 571. The applicant has also not made a false claim of U.S. citizenship, thus he is not inadmissible under section 212(a)(6)(C)(ii) of the Act. Accordingly, the applicant is not inadmissible and the field office director's findings regarding a misrepresentation under section 212(a)(6)(C) of the Act are withdrawn. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here the applicant is not inadmissible and therefore not required to file a waiver application.

**ORDER:** The appeal is dismissed as the underlying application is unnecessary.