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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **JUL 08 2015**

[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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

for 

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, New York, New York, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed, the prior decision of the Acting District Director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

The applicant is a native and citizen of Brazil 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 having procured a fraudulent Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence, stamp (Form I-551 stamp) in his passport. The applicant is applying for 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 U.S. citizen spouse.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly.

Counsel asserts that the finding by the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act is in error; alternatively, counsel asserts that the applicant has demonstrated that his spouse would experience extreme hardship if his waiver were not approved. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 the Secretary 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.

In a brief submitted by counsel in support of the applicant's motion to reopen the denied I-485, counsel contends that the applicant is not inadmissible for misrepresentation as the applicant did not procure or seek to procure a benefit under U.S. immigration laws. Specifically, counsel asserts that the applicant never used the Form I-551 stamp in his passport to acquire an immigration benefit.

In the October 2, 2013 Form I-601 application, the applicant maintains that in 2006, he was trying to open a bank account at [REDACTED] and was told that he needed a social security number, which he did not

have. He asked his friend about this and his friend referred him to an individual who he said would help him. The applicant gave his passport to this individual, who days later returned the passport to the applicant with the Form I-551 stamp inside. The applicant states that he never used the Form I-551 stamp in his passport to get any type of benefit from U.S. Citizenship and Immigration Services (USCIS) or any other government agency. This account is repeated by the applicant in his April 21, 2014 Form I-601 application and in his October 30, 2014 affidavit.

In the case at hand, the record indicates that a fraudulent Form I-551 was obtained and placed in the applicant's passport. The record does not indicate that the applicant utilized the fraudulent Form I-551 stamp to obtain any benefit under the Act. The record therefore does not establish that the applicant himself sought an immigration benefit through fraud or misrepresentation.

Based on the record, it has not been established that the applicant made a willful or material misrepresentation to procure an immigration benefit under the Act. We thus find that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the Form I-601 is not necessary. Accordingly, the appeal will be dismissed, the prior decision of the Acting District Director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.

ORDER: The appeal is dismissed, the prior decision of the Acting District Director is withdrawn and the application for a waiver of inadmissibility is declared unnecessary as the applicant is not inadmissible.