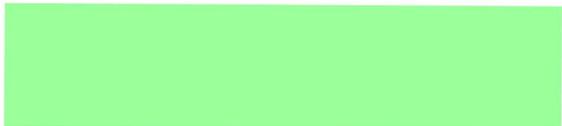




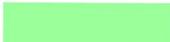
U.S. Citizenship
and Immigration
Services

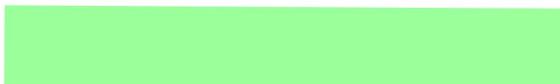
(b)(6)



Date: **MAR 16 2015**

Office: LOS ANGELES 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:

SELF-REPRESENTED

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nicaragua 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 attempting to procure admission to the United States or other benefit provided under the Act through fraud or misrepresentation. The applicant submitted an Application to Adjust Status (Form I-485) pursuant to section 202 of Public Law 105-100, the Nicaraguan and Central American Relief Act (NACARA).

The field office director found that the applicant failed to establish that he has a qualifying relative through whom he has eligibility for a waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director* dated August 14, 2014.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that he used assumed identities to protect himself while helping law enforcement. With the appeal the applicant submits a statement, school documentation for his daughter, and letters of support from family and friends. The record contains evidence submitted in conjunction with the application to adjust status and a Requests for Asylum (Form I-589) filed in 1985 and 1989. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 reflects that on [REDACTED] 1989, the applicant was convicted in the [REDACTED] Utah, of Conspiracy to Commit Attempted Forgery, a Class A Misdemeanor, and was

sentenced to 12 months incarceration. The applicant was then released to the then-U.S. Immigration and Naturalization Service, ordered deported by an immigration judge, and deported to Mexico under an assumed name and nationality on [REDACTED] 1989. The field office director determined that because during the applicant's deportation proceedings he provided an assumed name and falsely claimed to be from Mexico, he is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.

The principal elements of a misrepresentation that render an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

In this case, the record does not establish that the applicant used an assumed name and nationality in an attempt to procure a visa, other documentation, or admission to the United States, or any other benefit under the Act. Although the applicant presented himself to an immigration judge and agents of the then-U.S. Immigration and Naturalization Service as a national of Mexico using an assumed name, his actions were not in an effort to obtain a benefit. The applicant was deported to Mexico rather than his native Nicaragua, but the record does not otherwise show that the applicant used the incorrect information to seek a benefit or that he received a benefit by using a false name and nationality. The applicant therefore is not inadmissible under section 212(a)(6)(C)(i) of the Act.

We do find, however, that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

Section 212(a)(2)(A) of the Act states, in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (BIA) stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

As noted above, on [REDACTED] 1989, the applicant was convicted in the [REDACTED] Utah, of Conspiracy to Commit Attempted Forgery, a Class A Misdemeanor, and was sentenced to 12 months incarceration.

At the time of the applicant's conviction, the Utah Criminal Code, Title 76, Chapter 6, Offenses Against Property stated:

Part 5. Fraud

76-6-501. Forgery — "Writing" defined.

- (1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:
 - (a) Alters any writing of another without his authority or utters any such altered writing; or
 - (b) Makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.
- (2) As used in this section "writing" includes printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification.

- (3) Forgery is a felony of the second degree if the writing is or purports to be:
- (a) A security, revenue stamp, or any other instrument or writing issued by a government, or any agency thereof; or
 - (b) A check with a face amount of \$100 or more, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.
- (4) Forgery is a felony of the third degree if the writing is or purports to be a check with a face amount of less than \$100; all other forgery is a class A misdemeanor.

Forgery has been held to be a crime involving moral turpitude. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980). Crimes involving fraud, deceit, and theft are generally considered to be crimes involving moral turpitude. *See, e.g., Tillinghast v. Edmeud*, 31 F.2d 81 (1st Cir. 1929). Furthermore, in *Matter of Serna*, 20 I&N Dec. 579, 583-84 (BIA 1992), the Board states that intent to defraud involves moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that “Whatever else the phrase ‘crime involving moral turpitude’ may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). We therefore find the applicant inadmissible under § 212(a)(2)(A)(i)(I) of the Act based on his conviction.

Section 212(h) of the Act provides, in pertinent parts:

The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that -

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence

if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident

Since the activities that are the basis for the applicant's criminal conviction occurred more than 15 years ago, he is eligible to apply for a waiver under section 212(h)(1)(A) of the Act. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an applicant's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996) (citations omitted).

Here evidence in the record is insufficient to support that the applicant warrants a favorable exercise of discretion. The negative factors include the applicant's conviction for a crime involving moral turpitude and his subsequent deportation using an alias and assumed nationality. Although the applicant does not contest that he was deported under an assumed name and nationality, he asserts that he was working as an informant for [redacted] area law enforcement agencies in narcotics cases and therefore used other names and invented stories about his identity for his protection. He asserts that in 1989 he was not given the chance to present himself to the immigration judge because he was part of a group and his sentence was deportation. The applicant further asserts that he did not have the opportunity to defend himself because people knew his family and he was afraid they would be taken if it was found out that he was providing information to police.

We note that the record indicates that the applicant provided a false name and nationality when he was detained by immigration authorities in Utah after his [redacted] 1989 conviction and signed his Order to Show Cause as well as other documentation under the false name when he was deported on [redacted] 1989. There is no indication that he attempted to provide his correct name and nationality at any time prior to his deportation to Mexico. Further, although the record contains a letter dated February 19, 1999, from the [redacted] Sheriff's Department stating that the applicant had worked as an informant since [redacted] and a letter dated October 8, 1998, from the [redacted] California Police Department stating that the applicant had been working as an informant since [redacted] there is no evidence on the record that he was working as an informant in [redacted]. Further, the applicant was arrested and convicted of Conspiracy to Commit Attempted Forgery in Utah and his deportation proceedings took place in [redacted] Colorado while he was in the custody of the Immigration and Naturalization Service, and it is not clear how providing his correct name when arrested outside of California would put his family in danger.

The applicant has offered no explanation of the circumstances of his attempted forgery conviction and has not taken responsibility for that crime. Further, on his Form I-485, submitted in 1999, the applicant did not disclose this conviction or other arrests, including a 1988 arrest for forgery and receiving stolen property in [REDACTED] for which charges were still pending at the time. Rather, he noted only a 1994 DUI conviction and other charges that were dropped in 1986. The applicant also indicated "no" to the form's part three, question nine whether he had ever been deported from the United States, and a handwritten notation on the form indicates the applicant informed the adjudicating officer that he had left voluntarily in 1989.¹

The favorable factors in this case are the presence of the applicant's family in the United States and letters of support from friends and from his son. The applicant also asserts that he is responsible for his 13-year-old daughter but submitted no evidence to establish who has legal custody of his daughter since his divorce from her mother, with whom the daughter lives, whether he provides her with financial or other support, or how the applicant is responsible for her. The record contains no financial documentation since 2004 and there is no evidence of the applicant's employment or any current information about his financial situation, responsibilities, liabilities, or assets. In his statement the applicant contends that he is not authorized to work, but USCIS records show that he has obtained work authorization for periods in the past and was eligible for work authorization until the August 2014 denial of his Application to Adjust Status.

In his statement the applicant contends that he works for law enforcement agencies, uses other identities, and testifies in federal and municipal courts against criminals, and his adult son's letter states that the applicant has worked for many years with law enforcement agencies. Despite these assertions, the only documentation submitted to the record are two letters from local law enforcement agencies dated in [REDACTED] and [REDACTED]. There is no proof of the applicant's continued work as an informant for police. In the present matter we do not find the favorable factors to outweigh the negative factors and will not favorably exercise the Secretary's discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ The record shows that the applicant indicated on Form I-485, filed in 1999, that his most recent entry to the United States was in April 1984 and he submitted a statement, dated May 29, 1999, that he had not been outside the United States since the arrival indicated on the Form I-485. It is not clear from the record, however, when and how the applicant reentered the United States following his 1989 deportation.