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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6

AUG 10 2010

FILE:

[REDACTED]

Office:

[REDACTED]

Date:

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v),
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further proceedings consistent with this decision.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I), of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of more than 180 days but less than one year. The applicant is the spouse of a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to adjust status in the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in finding inconsistent statements and evidence in the case. Counsel contends that in barring the applicant admission to the United States his spouse would endure extreme hardship.

The AAO will first address the finding of inadmissibility. Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

The Form I-130, Petition for Alien Relative, was filed on March 30, 1993, and approved on April 6, 1993. The Form I-485, Application to Register Permanent Residence or Adjust Status, was filed by the applicant on February 2, 1998. The applicant indicated in his adjustment application that he entered the United States without inspection. The record is not clear when the applicant left the United States on advance parole, but according to the Form I-512, Authorization for Parole of an Alien into the United States, he left prior to May 4, 2000, and the denial of the Form I-485 (dated

February 24, 2000) indicated that the applicant returned to the United States on March 10, 2000. The applicant filed a second Form I-485 on May 30, 2003, which was denied on August 22, 2007. Based on the record, the applicant began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until February 2, 1998, when he filed the adjustment application. When he left the United States some time in early May 2000, the applicant triggered the three-year bar, which rendered him inadmissible under section 212(a)(9)(B)(i)(I) of the Act until May 2003. He is therefore no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

The AAO notes that the record indicates that the applicant may be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation, though the director did not explicitly find the applicant inadmissible on this ground. The director states in the denial letter that during the adjustment of status interview on July 19, 2007, the applicant asserted under oath that he traveled from the Dominican Republic to Panama and from Panama to Mexico, and that he subsequently entered the United States from Mexico in February 1999. He claimed to have used his birth certificate, which was issued by proper authorities in the Dominican Republic, to enter Panama and Mexico. The applicant originally declared that he was not inspected by a U.S. immigration officer, but later stated that the bus that he traveled on to cross the United States border was stopped by a U.S. immigration officer who inspected the passengers. The applicant asserted that he showed his valid Dominican Republic birth certificate and was permitted to enter the United States by bus, which then continued on to San Diego, California. The applicant maintained that he never falsely claimed to be a U.S. citizen or any other person besides his true identity.

The AAO finds that the applicant has made inconsistent statements regarding the nature of his entry into the United States. The director conveyed that the applicant originally claimed that he entered the United States without inspection, and then asserted that he gained admission to the United States by presenting his Dominican Republic birth certificate to a U.S. immigration officer. We find it implausible that a U.S. immigration officer would not have admitted the applicant to the United States on that document alone. To gain admission into the United States the applicant would have needed to present a valid unexpired Dominican passport and a nonimmigrant visa issued by a U.S. embassy or consulate.

Furthermore, there are material inconsistencies in the documentation submitted by the applicant. The director pointed out that in the letter from the psychotherapist, which is dated July 11, 2007, the therapist stated that the applicant's wife attends psychotherapy every two weeks and is currently unemployed and homeless; but the applicant and his wife appeared at the adjustment of status interview attesting to their marital relationship and joint residence in New York City at 86 Fort Washington Avenue, and the applicant's wife presented recent pay stubs and an employment letter dated June 26, 2007, indicating employment since June 3, 1995. The Form I-864, Affidavit of Support Under Section 213A of the Act, dated July 14, 2007, indicated that the applicant's wife was employed with [REDACTED] Home Attendant Service and earned \$24,783. The applicant, therefore, needs to explain in a plausible manner how he gained admission into the United States, if indeed he was admitted, and reconcile the psychotherapist's letter with his and his wife's statements about their marital relationship, residence, and his wife's employment (and the documentation corroborating that employment).

Therefore, the matter will be remanded to the director to provide the applicant with the opportunity to address his inadmissibility under section 212(a)(6)(C)(i) of the Act. If, after giving the applicant the opportunity to address the inconsistencies noted in this decision and the director's prior decision, the director determines that the applicant is not inadmissible under section 212(a)(6)(C)(i), the director will reopen and continue processing of the applicant's Form I-485. If, on the other hand, the director finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, the director will issue a new decision stating the basis for that determination and addressing the merits of the applicant's Form I-601 waiver application. Prior to issuing the decision, the director will provide the applicant the opportunity to submit new and/or updated evidence regarding extreme hardship.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision.