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U.S. Department of Homeland Security
U.S. citizenship and Immigration Services
Office of Administrative Appeals MS 2090 0
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6

FILE: [REDACTED] Office: ROME, ITALY

Date: **AUG 16 2010**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(3)(B)(i) and section 212(a)(9)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(B)(i) and § 1182 (a)(9)(B)(i)

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,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States pursuant to section 212(a)(3)(B)(i)(V) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(3)(B)(i)(V), for being a member of a foreign terrorist organization and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States in excess of one year and seeking admission within ten years of his last departure. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that no waiver was available to the applicant for a violation of section 212(a)(3)(B)(i)(V) of the Act and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated September 1, 2009.

On appeal, counsel for the applicant states that the Field Office Director erred in finding that the applicant is a member of a terrorist organization, basing his decision on erroneous conclusions regarding the applicant's asylum application and testimony. Counsel further asserts that the applicant has established that his spouse would experience extreme hardship if he is unable to return to live in the United States. *Form I-290B, Notice of Appeal or Motion*, dated September 28, 2009.

In support of the waiver, the record includes, but is not limited to, counsel's brief; printed materials concerning [REDACTED]; medical documentation relating to the applicant's spouse, his stepdaughter and his son; a psychological evaluation and a psychosocial assessment of the applicant's spouse; counseling reports for the applicant's spouse; documentation of an evaluation and counseling for the applicant's stepdaughters; and country conditions materials on Egypt.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

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

....

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that in July 1992, the applicant entered the United States as a B-2 nonimmigrant visitor. On December 22, 1992, he filed for asylum and was interviewed in connection with his asylum application on March 23, 1993. Based on his failure to appear for a second interview, the applicant's case was referred to an immigration judge. On May 2, 2001, the immigration judge ordered the applicant removed in absentia. On July 28, 2005, the applicant was removed to Egypt. Accordingly, the applicant accrued unlawful presence from May 3, 2001, the day after he was ordered removed by the immigration judge, until his 2005 removal from the United States. As he accrued more than one year of unlawful presence and is seeking admission within ten years of his 2005 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and must obtain a 212(a)(9)(B)(v) waiver in order to be admitted to the United States.

The Field Office Director has also found the applicant to be inadmissible to the United States under section 212(a)(3)(B)(i)(V) of the Act based on his membership in [REDACTED] designated by the Secretary of State as a foreign terrorist organization. In reaching his decision, the Field Office Director relied on the applicant's testimony during his first asylum interview, conducted on March 23, 1993. The AAO, however, does not find the record of the applicant's testimony to offer sufficient detail for it to reach a determination as to whether he claimed membership in the [REDACTED] or the [REDACTED] as counsel contends. Accordingly, the AAO is unable to conclude that the applicant is inadmissible under section 212(a)(3)(B)(i)(V) of the Act.

The AAO does, however, find the record to contain sufficient evidence to establish that, in addition to his 212(a)(9)(B)(i)(II) inadmissibility, the applicant is barred from the United States pursuant to section 212(a)(6)(C)(ii) of the Act.¹

Section 212(a)(6)(C) of the Act provides in pertinent part:

(C) Misrepresentation

...

(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.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the all of the grounds for denial are not identified in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

(II) Exception- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

The record documents that, on November 1, 1997, the applicant submitted an application for a U.S. passport in the name of [REDACTED] providing a counterfeit New York birth certificate as proof of his citizenship. On December 29, 1997, the applicant was arrested by Special Agents in the Bureau of Diplomatic Security, Department of State. He admitted his true identity and stated that he had purchased the birth certificate submitted with his passport application from a document vendor in Los Angeles.

There is no waiver available for a violation of section 212(a)(6)(C)(ii) of the Act and the applicant is not eligible for the statutory exception provided by section 212(a)(6)(C)(ii)(II). Accordingly, the AAO finds no purpose would be served in considering the applicant's eligibility for a waiver under section 212(a)(9)(B)(v) of the Act or in determining whether he merits a waiver as a matter of discretion.

An applicant must demonstrate by a preponderance of the evidence that he or she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met his burden of proof in this particular case. The appeal will be dismissed.

ORDER: The appeal is dismissed.