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



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 09 2012**

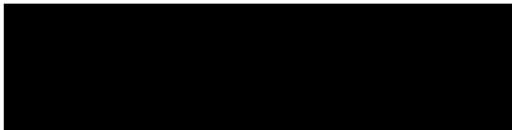
OFFICE: MEXICO CITY

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:



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.

Thank you,

f.s.r

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who attempted to enter the United States on January 21, 1997 by presenting an alien border crossing document that belonged to another individual.¹ The applicant was ordered excluded from the United States and deported on January 24, 1997. The applicant subsequently entered the United States without admission or parole later in January 1997 and departed from the United States in October 2007. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until October 2007. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) 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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having sought entry into the United States by falsely claimed to be a U.S. Citizen. The applicant is a beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The District Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse. The District Director further determined that the applicant is ineligible for a waiver based upon a prior claim to U.S. citizenship, and that the applicant may be subject to the provisions of section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C) so that he would have to demonstrate eligibility to reapply for admission to the United States. The District Director denied the applicant's application accordingly. *See Decision of the District Director*, dated April 22, 2009.

Counsel for the applicant asserts that the applicant did not falsely claim to be a U.S. Citizen, and FBI and immigration records indicating that he sought to enter the United States under the name [REDACTED] at Calexico, California on January 21, 1997 by falsely claiming to be a U.S. Citizen do not relate to the applicant. Specifically, counsel states that the applicant was detained near San Diego with a group of individuals on January 21, 1997 and suggests that the fingerprints of the applicant and [REDACTED] were accidentally switched on that date. *See Statement from Counsel* dated December 5, 2007. Further, counsel states that the applicant was granted voluntary departure in January 1997 and was never subject to an order of removal. Counsel contends that these factual discrepancies have arisen because the applicant's identity was mistaken for another alien, and points to discrepancies between the applicant's fingerprint card and the FBI "rap sheet", including the height, weight, and date of birth listed.

¹ Based on a review of State Department and other government records it appears that the applicant attempted to enter the United States on January 21, 1997 at Calexico, California with a fraudulent document and stated his name was [REDACTED] with a date of birth of March 4, 1978. On January 24, 1997 he was ordered excluded by an immigration judge and deported under file number [REDACTED]

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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:

- (1) 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 immigrant 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...

After a review of U.S. Department of State and other government databases and examination of photographs and other identifying information of the applicant, it appears that file number [REDACTED] under the name [REDACTED] relates to the applicant. It further appears that File number [REDACTED] relating to an individual named [REDACTED] who was detained at Calexico, California on January 21, 1997 and charged with falsely claiming to be a U.S. Citizen, does not relate to the applicant. It is noted that based upon the records relating to file [REDACTED] the applicant applied for admission to the United States by presenting an alien border crossing card belong to another individual on January 21, 1997 at Calexico, California. *See Form I-213*, dated January 21, 1997. On January 24, 1997, the applicant was ordered excluded from the United States. *See Order of Immigration Judge*, dated January 24, 1997. The applicant was deported from the United States on that same date. *See Record of Exclusion and Deportation*, dated January 24, 1997. The applicant would therefore be inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation as well as under section 212(a)(9)(B)(i)(II) of the Act and would require a waiver of inadmissibility.

The AAO remands the matter to the district director for a final determination, based upon a review of the files in question and any other identifying information available, of which file relates to the applicant. If it is determined that the applicant is eligible to seek a Form I-601 waiver of inadmissibility, the director shall issue a new decision addressing the merits of the applicant's Form I-601 application based upon the additional evidence. If that decision is adverse to the applicant, it will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

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