

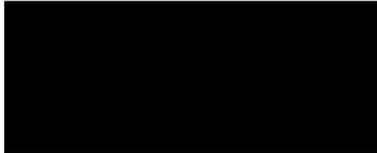
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

DATE: JUN 20 2012 OFFICE: PHILADELPHIA



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

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

The applicant, who is a native and citizen of Algeria, was found inadmissible 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 admission to the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, he sought a waiver of inadmissibility (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in conjunction with his application for adjustment of status (Form I-485) in order to remain in the United States with his U.S. citizen spouse.

In a decision dated May 7, 2010, the Field Office Director concluded that the applicant did not meet his burden of proof to illustrate that his U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. The Field Office Director indicated that the application would also be denied as a matter of discretion.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse will suffer from extreme hardship as a result of the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, letters from the applicant's spouse, biographical information for the applicant, biographical information for the applicant's spouse, biographical information for the applicant's children, medical records for the applicant's spouse and children, documentation related to the applicant's spouse's family in the United States, documentation regarding the applicant's spouse's employment and benefits, documentation regarding country conditions in Algeria, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(6)(C) of the Act, which 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.

...

The record demonstrates that the applicant procured admission to the United States pursuant to the visa waiver program through fraud or material misrepresentation on September 6, 2000 by presenting a French passport belonging to another individual at the United States Port of Entry.

On January 12, 2005, the applicant admitted to substituting his photograph on the French passport to gain admission to the United States. As a result of this material misrepresentation used to gain admission to the United States, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not challenge his inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

(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 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 applicant is eligible to apply for a waiver of inadmissibility in conjunction with an application for admission to the United States. A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which in this case is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The applicant submitted his application for a waiver of inadmissibility in conjunction with an application for adjustment of status while he was present in the United States. The record, however, illustrates that the applicant is not presently eligible for adjustment of status in the United States. The applicant was ordered removed by U.S. Immigration and Customs Enforcement on November 12, 2009 pursuant to section 217 of the Act and ultimately removed from the United States on May 12, 2010.¹ On April 8, 2011, the applicant filed an Application for Action on an Approved Application or Petition (Form I-824) indicating that he resided in Birkhadem, Algeria. As the record establishes that the applicant is residing outside the United States, the applicant is no longer eligible for adjustment of status, and it is necessary that he file his waiver application in connection with an immigrant visa application in accordance with the instructions on Form I-601. 8 C.F.R. § 212.7(a). The Field Office Director, Philadelphia, Pennsylvania, no longer has jurisdiction over the applicant's Form I-601, application for waiver of inadmissibility.

As the applicant is residing outside the United States and is ineligible for adjustment of status,

¹ As a result of the applicant's removal from the United States, he is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant will require permission to reapply for admission into the United States (Form I-212) under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) for a period of ten years from the date of his removal. If Form I-212 is filed, it should be filed concurrently with Form I-601 pursuant to 8 C.F.R. § 212.2(d).

there is currently no underlying application for admission pending upon which to base a Form I-601 waiver application and no purpose would be served in adjudicating the present appeal. In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. The appeal in the present matter will therefore be dismissed.

ORDER: The appeal is dismissed.