



U.S. Citizenship
and Immigration
Services

(b)(6)

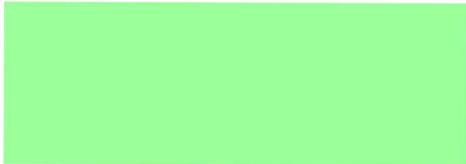


Date: **JAN 26 2015** Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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 Director, Nebraska Service Center, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Nigeria and citizen of the United Kingdom who was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside in the United States.

The director determined that there is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director* dated June 16, 2014.

On appeal counsel for the applicant asserts that USCIS abused its discretion and that the applicant is entitled to a favorable exercise of discretion. With the appeal counsel submits a brief. The record contains a statement from the applicant's spouse and medical documentation for the spouse, and evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

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

- (i) 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
 - (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 reflects that the applicant entered the United States via the Visa Waiver program on June 24, 1999, with authorization to remain until September 24, 1999. On October 22, 2009, the applicant signed an I-9 Employment Eligibility Verification form under an alias and indicated that she was a U.S. citizen. On February 29, 2012, U.S. Immigration and Customs Enforcement issued the applicant an order of removal in accordance with section 217 of the Act finding the applicant deportable under section 237(a)(3)(D)(i) of the Act for falsely claiming to be a U.S. citizen and

under section 237(a)(I)(C)(i) of the Act for unauthorized employment. The applicant departed the United States on May 23, 2012.

The applicant is also inadmissible under 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 for more than one year and again seeking admission within 10 years of her last departure from the United States.

Section 212(a)(9)(B) of the Act provides, 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 the applicant accrued more than one year of unlawful presence after April 1, 1997, the effective date for relevant amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), until her filing of a Form I-485 on December 28, 2010.

Counsel asserts that while there is no immigrant visa waiver available for an alien who is inadmissible under 212(a)(6)(C)(ii) of the Act, a non-immigrant waiver is available as a matter of discretion under section 212(d)(3)(A) of the Act. Counsel asserts that the applicant has no criminal record and that the purpose of visiting the United States is to see her ailing husband who has a severe medical condition that is explained by a letter from the husband and medical records submitted with the original application. We note that an applicant seeking a waiver as a nonimmigrant must file Form I-192, Application for Advance Permission to Enter as Nonimmigrant, pursuant to section 212(d)(3)(A)(ii) of the Act, with U.S. Customs and Border Protection. The applicant filed Form I-601 in conjunction with her immigrant visa application, and section 212(d)(3)(A) of the Act therefore does not apply to her.

Applicants making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of IIRIRA, are inadmissible under section 212(a)(6)(C)(ii)(I) of the Act and are ineligible for waiver consideration. No waiver is available for a violation of section 212(a)(6)(C)(ii)(I) and the record fails to demonstrate that the applicant qualifies for the exception described in section 212(a)(6)(C)(ii)(II). As there is no waiver of this permanent ground of inadmissibility, no purpose would be served in examining the applicant's eligibility for a waiver of any other ground of inadmissibility. The appeal will therefore be dismissed.

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.