



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



AZ

FILE [Redacted] Office: Philadelphia

Date: AUG 22 2000

IN RE: [Redacted]

Public Copy

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

IN BEHALF OF APPLICANT:
[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Guinea who was found to be inadmissible to the United States under § 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 into the United States by fraud or willful misrepresentation in October 1994. The applicant married a United States citizen in September 1997 and is the beneficiary of an approved preference visa petition. The applicant seeks the above waiver in order to remain in the United States and reside with his spouse.

The acting district director concluded that the applicant appeared to be inadmissible under § 212(a)(C)(6) of the Act and denied the application because there is no evidence that the form was properly feed in, so it is improperly filed.

8 C.F.R. 103.2(a)(7)(ii) states, in pertinent part, that if the application is pending and charges are not paid within 14 calendar days, the application shall be rejected as improperly filed.

The Associate Commissioner is required to adjudicate an appeal of a decision by a Service office under the provisions of the Act relating to the requirements of a particular statute, in this case § 212(i) of the Act, and not de novo based upon a finding of non-payment of fees.

The acting district director determined that the application was improperly filed, so it should be rejected. The matter will be remanded to the acting district director to reject the application, to accept a properly filed application, to adjudicate that application based on the appropriate statute and to forward any adverse decision made on that application to the Associate Commissioner for review.

ORDER: The appeal is rejected. The matter is remanded to the acting district director for appropriate action based on the above discussion.