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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: JUL 17 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

JUL703_01H2212

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdraw and the appeal will be dismissed as moot.

The applicant is a native and citizen of Mexico who entered the United States (U.S.) without a lawful admission or parole in 1990. The applicant was found to be inadmissible to the United States 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 obtaining a false alien registration card and social security card and using the documents to gain employment in the United States. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative filed by his wife in 1996. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his U.S. citizen wife and denied the application accordingly.

On appeal, counsel asserts that "the Service failed to correctly assess the emotional, financial, and psychological damage to the U.S. citizen spouse and children." In support of his assertion, counsel submitted a sworn affidavit from the applicant's wife stating that the applicant is the sole source of income for her family and that she would suffer emotional and financial hardship if his waiver of inadmissibility is not granted. Counsel additionally submitted a copy of the applicant's mortgage payment and copies of his children's birth certificates. No other written or documentary evidence was submitted.

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

> (i) In general.- 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.
>
> . . . .
>
> (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides in pertinent part that:

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 district director's decision states that:

> A review of the record in your case reveals that you willfully misrepresented your status in the United States by obtaining and using a fraudulent Alien Registration Card, form I-551, and Social Security card to seek employment in the United States. During an interview concerning your application for adjustment of status, you admitted to an officer of this Service that you used the false documents to gain employment in the United States and that you were aware that such use was against the law. Therefore, it is found that you are inadmissible under Section 212(a)(6)(C)(i) of the Act . . . .

The AAO finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

> It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, **must be made to an authorized official of the United States Government** in order for excludability under section 212(a)(6)(C)(i) of the Act to be found.

Matter of Y-G-, 20 I&N Dec. 794 (BIA 1994) (citations omitted; emphasis added.)

In the present case, a thorough review of the record reflects no indication that the applicant practiced fraud or made a willful misrepresentation to a U.S. government official when he procured a fraudulent alien registration card and social security card. Rather the record reflects that the applicant purchased the fraudulent documents from a private party in Phoenix, Arizona for $50.00. Likewise, obtaining employment using the fraudulent documents in and of itself does not render him inadmissible. The record does not reflect that the applicant is subject to any other ground of inadmissibility.[1] The AAO thus finds that,

[1]It is noted that although the applicant entered the U.S. without inspection and subsequently resided and worked illegally in the U.S., these grounds of inadmissibility may be waived for the applicant pursuant to section 245(i) of the Act and 8 C.F.R. § 245.1(b).

based on the evidence in the record, the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is therefore moot and will not be addressed.

ORDER: The district director's decision is withdrawn and the appeal is dismissed as moot.