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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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MAY 23 2003

FILE

Office: Panama

Date:

IN RE: Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii), Filed in Conjunction with Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

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

DISCUSSION: The Form I-212 application was denied and the Form I-601 application was rejected by the Officer in Charge, Panama City, Panama, and the matter is now before the Administrative Appeals Office on appeal. The appeal of the decision on the Form I-212 application will be dismissed. The decision of the officer in charge to reject the Form I-601 application will be affirmed.

The applicant is a native and citizen of Colombia who sought to procure admission into the United States by presenting a Colombian passport with a photo-substituted nonimmigrant visa on February 2, 2001. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and § 1182(a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud or misrepresentation and for being an alien without a valid visa or lieu document. Therefore, he requires a waiver of grounds of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), on Form I-601.

The applicant was removed from the United States on February 3, 2001, under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). Therefore, he requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), on Form I-212.

The applicant is the beneficiary of an approved fiancée visa petition. The applicant's fiancée [REDACTED] (a native of Colombia and naturalized U.S. citizen and hereafter referred to as Ms. [REDACTED]) obtained a divorce from her first husband on October 17, 2001. She filed the fiancée visa petition on January 28, 2002. The visa petition was approved on May 16, 2002.

The record reflects that Ms. [REDACTED] was aware of the applicant's expeditious removal. Ms. [REDACTED] states that she was in Colombia visiting him and they decided to go to the U.S. Embassy seeking information regarding a fiancée visa. Ms. [REDACTED] states that they met a person there (outside the Embassy) who said he could help the applicant with a visa because Ms. [REDACTED] could not file a fiancée visa petition because she was not yet divorced.

On appeal, Ms. [REDACTED] submits medical documents relating to a neck sprain and cervical strain sustained in a May 20, 1999, automobile accident. She was discharged as stable with no evidence of serious injuries. On appeal, Ms. [REDACTED] states that she, as an American citizen, cannot relocate to Colombia with her two children because of the violence and terrorism in Colombia. Ms. [REDACTED] states that she has made numerous inquiries about the status of the applications and is under deep depression. Ms. [REDACTED] submits a psychiatric report dated February 21, 2003, which reflects that she is under the physician's care due to chest pains, suicidal ideas, insomnia, restlessness, aggressions, headaches, dizziness, and poor appetite. She is taking pharmacos and is receiving psychotherapy.

The officer in charge denied the Form I-212 application and rejected the Form I-601 application on the ground that the applicant failed to establish that Ms. Montes would be subject to extreme hardship through the applicant's continued inadmissibility to the United States.

Service operations instructions at O.I. § 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) shall be rejected on the ground that the applicant is not "otherwise admissible" as required and the fee for filing the application refunded.

Since "extreme hardship" is not a requirement in adjudicating a Form I-212 application, the officer in charge's decision will be partially withdrawn, and that application will be adjudicated *de novo*.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Section 212(a)(9) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and became effective on April 1, 1997. In IIRIRA, Congress imposed restrictions on benefits for aliens, enhanced enforcement and penalties for certain violations, eliminated judicial review of certain judgements or decisions under certain sections of the Act, created a new expedited removal proceeding, and established major new grounds of inadmissibility. Nothing could be clearer than Congress's desire in recent years to limit, rather than to extend, the relief available to aliens who have violated immigration law. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See *Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*,

408 U.S. 753, 766 (1972). See also *Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Congress has increased the bar to admissibility from 5 to 10 years. Congress has also added a bar to admissibility for aliens who are unlawfully present in the United States. In addition, Congress has imposed a permanent bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. In IIRIRA, Congress has added new and amended crimes, new grounds of inadmissibility, new grounds of deportability, and has enhanced enforcement authorities. It is concluded that Congress has placed a high priority on reducing and/or stopping aliens from overstaying their authorized period of stay and/or from being present in the United States without a lawful admission or parole.

The Bureau, following more recent judicial decisions and Congressional amendments, has accorded less weight to an applicant's equities gained following the commencement of removal proceedings, if the equities were gained while the applicant was unlawfully present in the United States or after a violation of law.

In 1990, section 274C of the Act, 8 U.S.C. § 1324c, was inserted by the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5059), effective for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) provided penalties for document fraud stating that "it is unlawful for any person or entity knowingly "(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act,..."

The applicant was in Colombia with Ms. [REDACTED] when he decided to procure a nonimmigrant visa for \$1000 US from an individual outside the U.S. Embassy to facilitate his entry into the United States. Ms. [REDACTED] stated that she was aware of that and that the applicant was expeditiously removed from the United States on February 3, 2001, after he tried to use that visa to procure admission. It must also be presumed that Ms. [REDACTED] was aware of those incidents when she filed the fiancée visa petition in January 2002.

To recapitulate, the applicant knowingly purchased a fraudulent nonimmigrant visa and attempted to use that document to gain admission into the United States by fraud in February 2001, a felony.

The favorable factors in this matter are the approved fiancée visa petition, and the prospect of general hardship to the petitioner.

The unfavorable factors in this matter include the applicant's attempt to procure admission into the United States by fraud and his expeditious removal from the United States.



The applicant's actions in this matter cannot be condoned. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones. Therefore, the appeal of the Form I-212 application will be dismissed.

The Form I-212 application has been adjudicated first and denied, and an appeal of that decision has been dismissed. Therefore, the officer in charge's decision rejecting the Form I-601 application will be affirmed.

ORDER: The appeal of the Form I-212 application is dismissed. The decision of the officer in charge to reject the Form I-601 application is affirmed.