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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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: PANAMA Date: SEP 0

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act; 8 U.S.C. § 1182(a)(6)(C)(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 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 waiver application was denied by the Officer in Charge (OIC), Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration and action.

The record reflects that the applicant is a native and citizen of Colombia who entered the United States without inspection in 1980 and again in 1989. The record indicates that the applicant was detained by the Immigration and Naturalization Service ("Service", now the Bureau of Citizenship and Immigration Services, "Bureau") in July of 1989, and that he was granted voluntary departure. The record reflects that the applicant did not depart the United States (U.S.) until 1992. The applicant married a naturalized U.S. citizen [redacted] in Colombia, on March 8, 2002, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The OIC found that on August 21, 1997, the applicant "presented a counterfeit Burroughs visa in order to obtain a non-immigrant visa through the revalidation process." Based on this information, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted by fraud or willful misrepresentation to procure a visa into the United States. The OIC additionally found that the applicant failed to establish that his wife would suffer extreme hardship if the applicant's waiver of inadmissibility were not granted.

On appeal, the applicant asserts that the OIC erred in finding that he presented a counterfeit visa in order to obtain a non-immigrant visa in August of 1997. In support of his assertion, the applicant submitted a copy of his 1997 passport. The applicant asserts further that his wife will suffer extreme hardship if he is not able to return to the United States.

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

> (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.

Section 212(i) of the Act provides 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.

In the present case, although the applicant entered the U.S. illegally on two occasions in 1980 and 1989, he failed to depart the U.S. pursuant to a grant of voluntary departure, and he remained in the U.S. unlawfully for more than one year, the applicant was not found to be inadmissible based on those grounds because the events occurred prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[1]

The OIC thus based his conclusion that the applicant is inadmissible solely on the statement that on August 21, 1997, the applicant tried to obtain a non-immigrant visa through the revalidation process by presenting a counterfeit visa.

A careful review of the record submitted to the AAO reflects that there is insufficient evidence to substantiate the OIC's inadmissibility finding. The record contains an undated, unofficial copy of a "Refusal Worksheet" stating simply that the applicant "presented a counterfeit burroughs visa in order to obtain a non-immigrant visa through the revalidation process." The worksheet contains no other information explaining or describing the incident, and no separate documentation or evidence regarding the incident or consular interview is contained in the record. Furthermore, the worksheet was not signed by a supervisory or reviewing officer, and there is no indication on the worksheet that the refusal of the applicant's visa was processed or implemented.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision, including the following items arranged from top to bottom in the following order:

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[1] Subsequent to the enactment of IIRAIRA, unlawful presence in the U.S. and unlawfully entering the U.S. are each separate grounds of inadmissibility.

(1) Notice of Entry of Appearance of Attorney or Representative (Form G-28).

(2) Brief, statement, and/or supporting evidence.

(3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).

(4) Decision.

(5) Any response to notice of intent to take unfavorable action.

(6) Notice of intent to take unfavorable action.

(7) Investigative reports and/or other derogatory information.

(8) Application or petition (Form I-601).

(9) Evidence in support of application or petition.

[Emphasis added} The AAO notes that the applicant has two Bureau alien files and that the information in the record presented to the AAO appears to be incomplete and in the form of a temporary working file. Therefore, the OIC's decision in the matter is withdrawn.

The appeal of the OIC's decision will be rejected, and the record remanded to him so that he can adjudicate the case and enter a new decision based on documentation contained in a record of proceeding that can be properly reviewed by the AAO. If that decision is adverse to the applicant, the director will certify his decision to the AAO for review accompanied by a properly prepared record of proceeding.

ORDER: The director's decision is withdrawn. The appeal is rejected. The matter is remanded to the director for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.