PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: APR 0 8 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application declared moot.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 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 and utilized a fraudulent alien registration card (Form I-551) in order to obtain unauthorized employment in the United States. The applicant is married to a lawful permanent resident of the United States. She seeks a waiver in order to remain in the United States with her spouse and U.S. citizen child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated August 21, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] erred in its analysis of the evidence presented regarding the applicant's eligibility for relief, wrongly concluding that the applicant has not demonstrated that extreme hardship would be imposed on a qualifying relative.

The record contains a sworn statement of the applicant's spouse, dated October 3, 2002; a letter and translation of the applicant's spouse, dated March 28, 2001; a copy of the U.S. birth certificate of the applicant's child; a copy and translation of the Mexican birth certificate of the applicant; a copy of a letter verifying the employment of the applicant's spouse; copies of financial and tax documents for the couple; a copy of the alien registration card issued to the applicant's spouse; a copy of a residential resale real estate receipt for property owned by the applicant's spouse and a copy of a document evidencing the enrollment of the applicant's child in school. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that on July 15, 1991, the applicant was apprehended at her place of employment. At that time, it was determined that the applicant provided a fraudulent alien registration card in order to obtain employment in the United States.

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

> (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:

> (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.

The AAO finds that presenting a false alien registration card in order to gain employment from a private employer does not render the applicant inadmissible. Further, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because she did not make false statements or present fraudulent documentation to an immigration or government official in order to obtain an immigration benefit. *See Matter of L-L-*, 9 I&N Dec.324 (1961).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) held that a respondent who purchased a fraudulent U.S. birth certificate, then used the birth certificate to fraudulently procure a government issued social security number, and later used both documents to procure a government issued U.S. passport, which aided him in traveling in and out of the United States and in obtaining employment in the United States:

> [C]learly [fell] within the purview of section 212(a)(6)(C)(i) of the Act. By fraud and by willful misrepresentation of a material fact, he sought to procure both "documentation" and "other benefits" under the Act.

The majority opinion provided no further clarification regarding their inadmissibility finding against the applicant. However, the concurring opinion written by Board Chairman, Paul W. Schmidt and Board Member, Gustavo D. Villageliu, made clear the BIA's position on the issue of employment by stating that:

> [T]he majority's opinion correctly notes that in purchasing the fraudulent birth certificate, using it to procure a fraudulent social security card, and subsequently using these documents to seek to procure a United States passport in order to travel into and out of the United States and seek employment, the respondent sought to procure both "documentation" and "other benefits" under the Act . . . . However, a small clarification is needed. The other benefits under the Act the respondent sought to procure are the right to travel with a United States passport pursuant to section 215(b) of the Act, 8 U.S.C. § 1185(b) (1994). The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act.
>
> . . . .
>
> Although the use or possession of such document is punishable under section 274C of the Act . . . working in the United States is not "a benefit provided under this Act," and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

Therefore, the AAO finds that the district director erred in finding the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Because the grounds for inadmissibility set forth in the district director's decision are determined to be in error, the applicant has not been determined to be inadmissible under the Act. The applicant's appeal will be sustained and her waiver of inadmissibility application will be declared moot.

ORDER: The appeal is sustained. The waiver application is moot, as the applicant has not been determined to be inadmissible.

AAOKLC01/76636442/02.17.04