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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: ATLANTA, GA

Date:

SEP 21 2009

IN RE:

[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 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Guinea who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Acting District Director* dated June 20, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant submitted a copy of a passport with a fraudulent U.S. entry stamp with his application for adjustment of status. *See Notice of Appeal to the AAO (Form I-290B)*. Specifically, counsel states that the applicant had a valid visa and submitted copies of his plane ticket as additional evidence that he was admitted to the United States as a visitor on September 9, 1998 as indicated on the entry stamp. Counsel further states that the applicant maintains that the stamp is genuine and that he only filed the waiver application as requested because he had lost his I-94 Arrival-Departure document and was informed there was no record of his entry. *See Notice of Appeal to the AAO (Form I-290B)*. In support of the appeal counsel submitted evidence that the applicant's wife filed a Petition for Alien Relative before April 30, 2001; copies of his airline ticket for travel from Dakar, Senegal to New York, New York on September 9, 1998; a copy of his passport and U.S. visitor's visa and stamp indicating he was admitted at New York on September 9, 1998.

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.

Department of State records indicate that the applicant was issued a B1/B2 visa on June 10, 1998 at Conakry, Guinea and the visa in the applicant's passport is therefore genuine. The applicant states that he lost his I-94 card and requested a duplicate copy, but was informed that there were no Service records of his admission and his Application for Replacement Arrival-Departure Document (Form I-102) was denied.

In a letter denying the applicant's waiver application, the Acting District Director states,

The entry stamp in your passport is suspect. A search of our databases failed to reveal such entry. Therefore, this entry stamp is not accepted as a legal entry and you are charged with committing fraud by presenting counterfeit evidence of your legal entry into the United States. *See Decision of the Acting District Director* dated June 20, 2007.

Based on the record, the AAO finds that the Acting District Director erred in determining that the applicant submitted a fraudulent entry stamp as evidence of his lawful entry. The determination was made solely on the basis that no record of the entry was found in Service databases, but this finding precludes the possibility that an error was made when entering the data such that it was not retrieved when the record search was conducted. Further, U.S. Department of State records clearly establish that the applicant was issued the B1/B2 visa in his passport that he states he used to travel to the United States on September 9, 1998. As the applicant presented a passport with a valid visa and airline tickets indicating he traveled on September 9, 1998, the AAO finds that he has met his burden of establishing that his entry stamp is genuine and he was lawfully admitted on September 9, 1998. Since he did not commit fraud or misrepresent a material fact to procure a benefit provided under the Act, he is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application filed pursuant to section 212(i) of the Act is moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver application. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.