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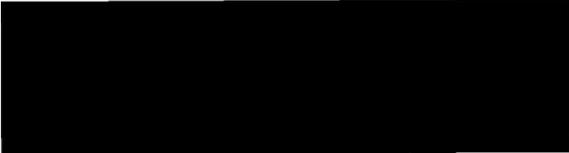
U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date:

JAN 16 2009

IN RE:

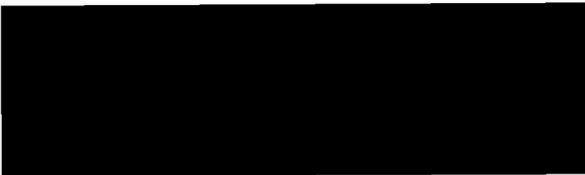
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(g) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g)

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the waiver application will be deemed moot.

The applicant is a native and citizen of the Bangladesh who was found 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). The record reflects that the applicant is married to [REDACTED] a U.S. citizen. The applicant is the beneficiary of an approved relative petition filed on his behalf by his spouse. The applicant presently seeks a waiver of inadmissibility in order to adjust his status to that of lawful permanent resident and remain in the United States.

The district director determined that the applicant was inadmissible, and that the denial of a waiver would not result in extreme hardship to his U.S. citizen spouse. The waiver application was denied accordingly. On appeal, the applicant, through counsel, notes that his spouse “suffered severe injuries in an automobile accident.” *See* Counsel’s Letter dated July 20, 2006. The appeal is accompanied by an accident report as well as a neurologist report. The applicant claims that “[w]hile the full extent of [his spouse’s] injuries will not be known for some time, there is no question that she will need the applicant’s assistance both financially and physically” The record also includes a physician’s report stating that the applicant’s spouse is “totally disabled.”

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The director found the applicant to be inadmissible based on his admission that he changed his date of birth in order to obtain work authorization under the LULAC legalization provisions. *See* Statement by Applicant, dated June 29, 2005.

Section 245A of the Act, 8U.S.C. § 1255a, states in pertinent part:

(c)(5) Confidentiality of information.-

(A) In general.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or

fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

A review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except the admitted change of birth date on his LULAC application.¹ The applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed, the director's decision is withdrawn and the waiver application is declared moot.

¹ The AAO further notes that a change of birth date from 1974 to 1961 would likely not amount to a material misrepresentation in a LULAC application, where presence prior to 1982 would have been at issue.