U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: DAKURA, RAYMOND

A 087-673-826

Date of this notice: 9/13/2013

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.

schuckec
Userteam: Docket

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File: A087 673 826 - Arlington, VA

Date: SEP 13 2013

In re: RAYMOND DAKURA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alfred L. Robertson, Jr., Esquire

ON BEHALF OF DHS: Pamela P. Ataii
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

Sec. 237(a)(1)(C)(i), I&N Act [8 U.S.C. § 1227(a)(1)(C)(i)] -
Nonimmigrant - violated conditions of status

APPLICATION: Adjustment of status

The respondent appeals from the Immigration Judge's March 26, 2012, decision pretermitting his application for adjustment of status under section 245(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1255(a). The appeal will be dismissed.

We review findings of fact, including credibility determinations, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues under a de novo standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, a native and citizen of Ghana, was admitted to the United States as a non-immigrant student on January 16, 2008, and remained in this country longer than permitted without authorization (I.J. at 1-3; Exh. 1; Tr. at 22-24). He acknowledged during his hearing that he signed an Employment Eligibility Verification Form (Form I-9) in order to obtain employment, and checked the box indicating that he was a "citizen or national of the United States" (I.J. at 3-4; Tr. at 24-25, 29-36). This testimony is corroborated by a copy of the Form I-9 he completed on March 8, 2008 (I.J. at 2; Exh. 5). The respondent conceded that he is removable as charged for remaining in the United States longer than authorized and violating the terms and conditions of his status, but sought adjustment of status based on a visa petition filed on his behalf by his United States citizen wife (I.J. at 1-2; Exhs. 1, 2; Tr. at 6, 27-28). However, the Immigration Judge found the respondent subject to inadmissibility under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), and pretermitted his adjustment application because there is no waiver of inadmissibility available for this ground (I.J. at 4-5). *See* section 212(a)(6)(C)(iii) of the Act.

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In order to be granted adjustment of status, the respondent bears the burden of establishing that he is admissible. *See* 8 C.F.R. § 1240.8(d); *Matter of Almanza*, 24 I&N Dec. 771, 773 (BIA 2009); *Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994) (requiring the respondent to establish his admissibility for the purposes of obtaining adjustment of status). Under section 212(a)(6)(C)(ii) of the Act, the respondent is inadmissible if he falsely represented himself to be a United States citizen for any purpose or benefit under the Act or any other federal or state law.

On appeal, the respondent maintains that the Immigration Judge erred in finding him inadmissible because false claims of United States citizenship on a Form I-9 are not the type of statements contemplated by the Act (Notice of Appeal). In addition, he suggests that the Form I-9 should not be considered because it was completed under duress (Notice of Appeal). Finally, the respondent notes that the criminal charges relating to his false claim were dropped by the prosecution for lack of evidence (Notice of Appeal).

Because the respondent bears the burden of establishing his eligibility for relief, and in light of his testimony indicating that he represented he was a United States citizen, we discern no clear error in the Immigration Judge's factual findings in this regard, nor do we disagree upon de novo review with his conclusion that the claim disqualifies the respondent from obtaining adjustment of status (I.J. at 3-5). Contrary to the respondent's assertions, an alien who falsely claims United States citizenship on a Form I-9 is seeking a "benefit" under the Act. *See, e.g. Theodros v. Gonzales*, 490 F.3d 396, 400-02 (5th Cir. 2007) (confirming that a false claim to citizenship in order to secure private employment is a false claim for a "purpose or benefit" under the Act). While the respondent suggests that he completed the Form I-9 under duress, he submitted no evidence in support of this claim. *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980) (explaining that the representations of counsel are not evidence). Finally, we note that a conviction is unnecessary to support a finding of inadmissibility under section 212(a)(6)(C)(ii) of the Act.

Based on the foregoing, we find that the Immigration Judge properly concluded that the respondent has not demonstrated admissibility under section 212(a)(6)(C)(ii) of the Act, for falsely claiming United States citizenship and, since there is no waiver available for this ground of inadmissibility, he is unable to establish statutory eligibility for adjustment of status. Accordingly, the following order is entered.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ARLINGTON, VIRGINIA

File: A087-673-826 March 26, 2012

In the Matter of

RAYMOND DAKURA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Immigration and Nationality Act - Section 237(a)(1)(B) - remaining in the United States for a time longer than permitted, Section 237(a)(1)(C)(i) - in that, after admission as a nonimmigrant under Section 101(a)(15), Respondent failed to maintain or comply with the conditions of his nonimmigrant status

APPLICATIONS: Adjustment of status under the provisions of Section 245, with a 601 waiver

ON BEHALF OF RESPONDENT: ALFRED ROBERTSON, ESQUIRE

ON BEHALF OF DHS: PAMELA ATAI, ESQUIRE

ORAL DECISION OF THE IMMIGRATION JUDGE

The Respondent is a native and citizen of Ghana. The Respondent was admitted to the United States at JFK Airport on or about January 16, 2008, as a nonimmigrant F-1, with authorization to remain in the United States for a temporary

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period not to exceed the duration of the status. The Respondent admitted that he did not remain in status, and Respondent conceded removability under both of the charges. That is, the 237(a)(1)(B) charge and the 237(a)(1)(C)(i) charge. Therefore, removability has been established by clear and convincing evidence.

The Respondent is applying for relief under the provisions of Section 245 of the Act, based upon a petition of his United States citizen wife. The Government contends that the Respondent is not statutorily eligible to adjust status, and is not statutorily eligible to apply for relief under the provisions of 212(i).

The Respondent has presented numerous documents which have been labeled Exhibits B through I. The Court has received those documents and has considered those documents. The Government has offered the Form I-9, which, it is the opinion of the Court, was not served within 15 days required, and, therefore, the Court did not receive that application, but has marked it for identification for appellate purposes as Exhibit 5. The Court has received and marked as Exhibit 6 the statement from Emmanuel Habib, that, although not served within the required period of time in advance, the Court has considered it was a rebuttal document and has received that document in rebuttal.

The Respondent testified under oath with respect to

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his claim for relief, and I will summarize the Respondent's testimony.

The Respondent testified that he came to the United States on a student visa. His uncle was paying for his tuition, and his uncle passed away. Therefore, the Respondent could not afford to pay the tuition, and the Respondent had to leave school, and, therefore, he did not continue going to school. The Respondent testified that he had no means of support and he was broke, and he ran into an individual at a bus station by the name of Francis Assamoir, and that he went to northern Virginia to live with him. This particular individual obtained for him documents, including the names of Emmanuel Nicholas Habib and Solomon Soehedey, which names the Respondent used in order to obtain employment. The Respondent was initially charged with Identity Theft and Fraud in the State Courts of Virginia, and those charges were nolle prosequi. The Respondent testified that this individual, Mr. Assamoir, forced him to give him the money that he earned, except for a limited amount of the income that he earned, and that the Respondent decided that he would not allow him to do that anymore, and he decided to leave his house. When he did that, Mr. Assamoir reported him to the government, and the Respondent was apprehended. The Respondent did testify that he did complete the I-9 form to get employment, and that, on that form, he did check the box that stated that he swore that he was a United States citizen. He testified that

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the case was dropped, and that he had used these other names to get employment at McDonald's and Target, but he did not remember the dates. He also advised that he did not file taxes for part of the time that he was working.

It is the opinion of the Court that, notwithstanding the fact that the Respondent did make an inconsistent statement with respect to whether or not he had the permission of Mr. Emmanuel Habib to use his name, that, basically, the Respondent's testimony is credible.

The Respondent did testify that, in filling out the employment eligibility verification form, the I-9, that he did check the box that he is a United States citizen. The purpose of this form, obviously, was to obtain employment. It is the opinion of the Court that, in claiming to be a United States citizen on that employment eligibility form, the I-9, that the Respondent violated Section 212(a)(6)(C)(ii)(I), in that he is an Alien who falsely represented, or who has falsely represented himself or herself, to be a citizen of the United States, for any purpose or benefit under this Act (including 277(4)(a)), or any other federal or state law. That would make him inadmissible. There is no waiver for this violation of the immigration laws. It is further the opinion of the court that the Respondent's contending that he was a United States citizen in applying for employment would constitute applying for an immigration benefit.

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Accordingly, it is the opinion of the Court that the Respondent is inadmissible, and he is not eligible to apply for any waiver, and, therefore, the Respondent has no relief available to him under the Immigration and Nationality Act. Therefore, I order the Respondent removed from the United States to Ghana on the charge contained on the Notice to Appear.

WAYNE ISKRA
Immigration Judge

5-22-12

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CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE WAYNE ISKRA, in the matter of:

RAYMOND DAKURA

A087-673-826

ARLINGTON, VIRGINIA

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

NICOLA DELPH (Transcriber)

YORK STENOGRAPHIC SERVICES, Inc.

MAY 21, 2012

(Completion Date)

nad/seh

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