

Immigration Fraud and Remedies

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Scenario 1

- Client is currently outside the US and wants to immigrate through an approved I-130 petition filed by her USC daughter. A few years ago, Client renewed her tourist visa. Before that, Client would visit her daughter and LPR husband using her old tourist visa. On some of those visits, Client would remain in the U.S. for longer than six months. She now wants to return to her family in the US on a permanent basis.

Fraud or Misrepresentation?

- INA § 212(a)(6)(C): “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.”
- Was there in fact a false representation?
- Was it willful?
- Was it material in procuring the visa?

Waiver?

- INA § 212(i): The Attorney General may discretionarily waive the application of clause § (a)(6)(C)(i) in the case of an immigrant who is the spouse, son, or daughter of a USC or LPR.
- Must establish “extreme hardship” to an USC/LPR spouse or parent.
- For VAWA petitions, may also show extreme hardship to the applicant and applicant’s USC/LPR children.
- I-601 Form
- What kind of evidence should be submitted?

Scenario 2

- Client entered the U.S. on an F-1 student visa. He didn't stay in school for long and instead began to work using a driver license and social security card that his cousin lent him. A few years later, he marries a USC and she files an I-130 petition for him. He files his adjustment of status application. Client claims marital discord and even abuse by his spouse. Client separates from his spouse but seeks your help in getting his legal residency.

Questions

- Did he material misrepresent the purpose of his entry as a student?
 - The applicant's intent at time of visa application/admission is key
 - 9 FAM 302.9-4(B)(3)(g) – **NEW POLICY FOR DOS**
 - USCIS Policy Manual? – No new policy as of yet; the 30/60 day “rule” only seen as a “tool,” not a rule per se.
- Did he falsely claim to be a USC for purposes of work?
- I-601 waiver eligible? Under VAWA? How about a U visa with an I-192 waiver?

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