



**U.S. Department of Justice**  
Immigration and Naturalization Service

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*Bank of America Center*  
*100 South Charles Street, Tower One*  
*Baltimore, Maryland 21201*

February 1, 2000

Paul Gani  
8560 Laureldale Drive  
Laurel, Maryland 20735

Dear Mr. Gani:

This replies to your letter of January 19, 2000, which raises the question whether a person who enters the United States in a nonimmigrant status with a preconceived intent to immigrate may have their adjustment of status application denied based upon a finding of fraud.

Section 245 of the Immigration and Nationality Act generally provides that a person who has been inspected and admitted, or paroled, into the United States may, in the discretion of the Attorney General, be adjusted to that of an alien lawfully admitted for permanent residence. Under this provision of law, such an application may be denied for statutory reasons, such as in cases where an applicant has procured a visa or entry into the United States by fraud or the willful misrepresentation of material facts, or as a matter of discretion, where the applicant has failed to establish that they warrant the approval of permanent residence.

Long standing Service policy (Operations Instruction 245.3(b) provides that,

If the evidence clearly establishes that the visa was obtained by fraud or misrepresentation, the application shall be denied, unless the applicant qualifies for a waiver of that ground of excludability pursuant to section 212(i).

However, this same instruction provides the following policy for immediate relatives of United States citizens (spouses, parents, and unmarried children),

In the absence of other adverse factors, an application for adjustment of status as an immediate relative should generally be granted in the exercise of discretion notwithstanding the fact that the applicant entered the United States as a nonimmigrant with a preconceived intention to remain. Matter of Cavazos, Int. Dec. 2750(BIA 1980) clarified and reaffirmed. Matter of Ibrahim, Int. Dec. 2866 (BIA 1981).

Accordingly, if there is clear evidence of fraud or willful misrepresentation on the part of the person applying for adjustment of status, their application will normally be denied, unless a waiver based upon extreme hardship to their United States citizen immediate relative is filed and granted. An example of willful representation might be where the applicant indicates, in writing, on their application for a nonimmigrant visa that they are employed in their home country and intend to return to this employment after their two week vacation in the United States, when in fact, they have terminated this employment with the intention of remaining in the U.S. permanently.

On the other hand, if there is no clear evidence of fraud or misrepresentation, the mere fact that the applicant had a preconceived intent to remain in the United States permanently will not usually result in the denial of their application for permanent residence if they are classifiable as an immediate relative of a United States citizen.

I hope that the forgoing discussion has clarified this office's position on this matter for you. Please do not hesitate to contact this office if you require additional information on this topic.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. [unclear]", written in a cursive style.

District Director