

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JEFF L. KHURGEL

Legal residency via reinstatement of waiver for fraudulent entry

EARLIER this week, the Ninth Circuit Court of Appeals vacated its earlier decision in *Orozco v. Mukasey*, thereby returning to the long-standing rule that aliens who entered the United States fraudulently are eligible to adjust their status in certain circumstances under section 245(a) of the Immigration & Nationality Act (INA). That is the section of law under which most people adjust status to that of green card holder. A fraudulent entry means entering the US by willfully misrepresenting a material fact.

The case, *Orozco v. Mukasey*, signals a welcome return to previous guidance by the court, vacating its original decision in the matter. The original decision in *Orozco* was very damaging to immigrants hoping to adjust their status if they entered the US fraudulently, holding that they were not permitted to do so, even if qualifying for a waiver for their misrepresentation. The court's vacation of the previous *Orozco* decision effectively undoes the damaging decision and is a return to long-standing policy, allowing those who entered fraudulently to be able to adjust their status in certain circumstances.

The facts in Mr. Orozco's case are similar to that of many aliens in the United States. Mr. Orozco entered the United States in 1996 using another person's green card. Later, he married a United

States citizen. Still later, he was placed in Immigration Court Proceedings before an Immigration Judge. In court, Mr. Orozco asserted that he was eligible for relief, meaning that he had a defense in the government's removal proceedings against him. Specifically, Mr. Orozco sought to adjust his status because he had been inspected and admitted, albeit with a fraudulent document, and so with a waiver for his fraud, he met the requirements to obtain a green card. The Immigration Judge, the Board of Immigration Appeals (BIA) and the Ninth Circuit disagreed with him.

The full Ninth Circuit Court of Appeals was petitioned to rehear the matter, to which the court agreed. Now, with this week's monumental Ninth Circuit vacation, the court returns to its long-standing course of reasoning that even a fraudulent entry constitutes an inspection and admission into the United States.

Under section 245(a) of the INA, an alien can apply for adjustment of status to that of green card holder if he was inspected and admitted or paroled into the United States, is admissible for permanent residence, and an immigrant visa is immediately available to him. Immediate relatives of US Citizens do not need to be in status at the time of application, but others do if not protected by INA section 245(i).

In the original *Orozco* decision, the court stated that a fraudulent entry is not lawful. The court pointed out that "it is a federal crime for an individual knowingly and willfully to make any materially false, fictitious or fraudulent statement or representation or make or use any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry". The court then held

that an entry cannot be criminal and lawful at the same time. Orozco contended that he had, in fact, been inspected and admitted as those terms were applied in an influential BIA case called *Matter of Areguillin*.

Orozco contended that a waiver of his misrepresentation under section 212(i) of the Act would cure his fraudulent entry problem. The court disagreed. While the court conceded that he might be eligible for the waiver of the ground of in-

admissibility caused by the misrepresentation (because he does have a USC spouse and she might be able to show extreme hardship to herself if he had to leave the US), it held that such waiver does not cure that he was not admitted properly, therefore he did not qualify for adjustment of status under section 245(a) on the INA.

This week's development signals a welcome return to previous procedure that will provide a benefit for thousands of aspiring

immigrants. Those who entered fraudulently and already have adjustment cases pending with either the Immigration Service or in Immigration Court should contact an immigration attorney immediately. Those who entered with any misrepresentation and are considering filing for any benefits should also contact a knowledgeable immigration attorney.

Atty. Reeves has represented clients in numerous landmark immigration cases

that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.

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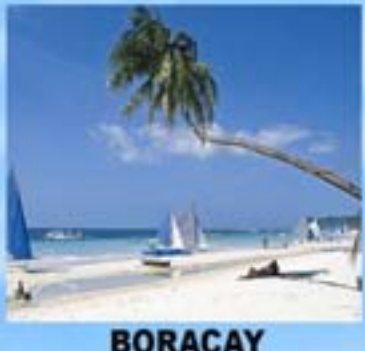
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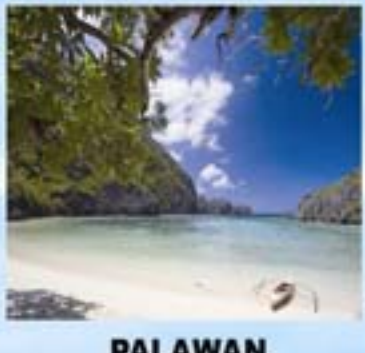
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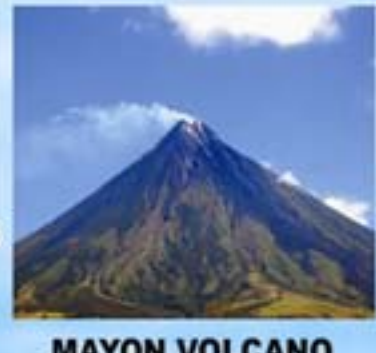
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