

## Attorney Famuyide Wins Green Card for an Alien With A Criminal Record

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Like many previous years, in the year 2013, Attorney Famuyide has rescued many immigrants from the shackles of the Immigration and Customs Enforcement Agency and helped to bring relief and comfort to many hopeless immigrants that have very difficult and bad cases. The latest case was of a woman who had multiple complicated legal issues, but to the amazement of the jubilating family members, Attorney Famuyide was able to unknot all the issues one by one and succeeded to winning the case.

It all started when the woman was brought to the United States as a child in the early 90s. During her teenage years, the woman got mixed up with wrong crowd and as a result of the influence of friends, she was arrested and charged with grand larceny and sentenced to jail. This woman remained in illegal immigration status for many years until the case was brought to Attorney Famuyide last year.

Before, this young woman who was in the late 20s turned 21, her parents made several efforts to obtain legal status for themselves while including her in the applications.

In late 1990s, one of the parents attempted to obtain immigration status using one of the special routes to legal status. This young woman was included in the application. The case was initially approved, and all the family members obtained employment authorization and advance parole to travel abroad. They all traveled abroad with the advance parole, even this woman. The underlying case at that time was eventually denied and the entire family stayed in illegal status. The advance parole and the denial of the underlying case brought about two major legal issues for this woman.

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At some point, her mother obtained status through another child and her father too obtained status through another U.S. citizen child. This woman was left in illegal status. Her mother petitioned for her in the mid 2000s. The petition was approved, but to obtain green card from the petition, she was facing myriad of legal issues.

Prior to when the case was brought to Attorney Famuyide, there were multiple issues with dire immigration consequences. The chief of the issues was the grand larceny conviction followed by the fact that she was over the age of 21 and have overstayed her visa in the United States.

At the time, Attorney Famuyide accepted the case, he itemized about four legal hurdles to cross before this woman could obtain permanent resident status in the United States. It was originally planned that to overcome the 10years penalty of using advance parole, application for waiver would be filed. Attorney Famuyide also decided that to overcome the fact this woman was over the age of 21 at the time of filing application for adjustment of status, Section 245(i) of the Immigration and Nationality Act was going to be invoked and the old approved petition filed by her father when she was under the age of 21 which was eventually revoked was going to be used to grandfather the new filing to obtain green card. Lastly, Attorney Famuyide in drawing up the winning strategy was going to argue that grand larceny conviction was a petty offense with no immigration implications citing case and provisions of applicable statutes.

Luckily, at the time of filing the application for adjustment of status, there was a decision issued by the Board of Immigration Appeals called In the Matter of Manohar Rao ARRABALLY,

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Respondent and Matter of Sarala YERRABELLY, Respondent which was decided on April 17, 2012. In that case, the court held that an alien who leaves the United States temporarily pursuant to a grant of advance parole does not thereby make a “departure . . . from the United States” within the meaning of section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2006). According to the court “In light of the foregoing, we conclude that the respondents are *not* inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. Consequently, they are not ineligible for section 245(i) adjustment based on the rationale of *Lemus I* and *Lemus II*. In light of this disposition, we have no occasion to address the remaining issues raised in the respondents’ appeal, all of which are premised on the assumption of their inadmissibility under section 212(a)(9)(B)(i)(II).” In essence, the decision removed the 10year penalty for traveling with advance parole and the first hurdle was passed.

The remaining major issues were whether or not the old approval could be used to grandfather the current petition, when the old approval was eventually revoked and also the grand larceny criminal conviction issue.

The general rule regarding adjustment of status in the United States is that an alien can only obtain legal status through adjustment of status in the United States if the alien is in legal status at the time of filing application for adjustment of status. There are two exception to this general rule namely when the alien is applying for adjustment of status through petition filed by an immediate relative and also when the alien qualifies to pay a penalty of \$1000 under Section 245(1) of the Immigration and Nationality Act.

In this case, Attorney Famuyide invoked a U.S. Citizenship & Immigration Services interoffice memorandum dated March 9, 2005 regarding the possibility of using an old approved or approval petition to grandfather a new petition to become eligible to pay the \$1000 penalty under Section 245(i) INA.

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According to the March 9, 2005 Memo, the USCIS stated *“if an alien demonstrates that a spouse or child relationship existed at the time a qualifying petition or application was properly filed on or before April 30, 2001, a principal alien’s spouse or child is a grandfathered alien regardless of any subsequent changes in the relationship with principal alien. This means that a spouse or child remains grandfathered even after losing the status of spouse or child, such as by divorce or the child becoming 21 years of age. Such spouse or child who is grandfathered may seek to adjust status under Section 245(i) on any proper basis, if so qualified.”* Attorney Famuyide was successful on this issue.

The last of the issues was the grand larceny conviction, Attorney Famuyide brought to bear the immigration definition of petty offense. He cited applicable laws to exonerate this alien from being ruled inadmissible because of criminal conviction. At the interview, the USCIS Officer agreed with Attorney Famuyide on the resolution of all these issues. The case was approved and the alien permanent resident alien card was issued. Another success story and mission accomplished.

This article is for your information only. It is not a representation of any future outcome. If you need legal assistance, please feel free to contact Attorney Famuyide at 718-647-6767 or send email to [jfamuyide@aol.com](mailto:jfamuyide@aol.com) .

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