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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File:



Office: NEWARK, NJ

Date:

MAY 17 2001

IN RE:

Applicant:



Application:

Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

Self-represented.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected and the decision of the district director will be withdrawn.

The applicant is a native of Colombia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1990. The applicant is married to a United States citizen and seeks the above waiver in order to remain in the United States and reside with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and that her request did not warrant discretionary relief. The district director denied the application accordingly.

On appeal, the applicant asserts that she has not disregarded U.S. immigration laws and states that if she is forced to return to Colombia, her son will have to accompany her. Due to the political climate in that country, she and her husband would fear for her son's safety.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision, including the following items arranged from top to bottom in the following order:

- (2) Brief, statement, and/or supporting evidence.
- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision.
- (7) Investigative reports and/or other derogatory information.
- (8) Application or petition (Form I-601).
- (10) Evidence in support of application or petition.

As constituted, the record fails to contain any investigative reports or other derogatory information concerning the applicant's fraud or historic disregard for United States immigration laws. Therefore, the district director's decision will be withdrawn.

In addition, it should be noted that the record of proceeding is interspersed with unrelated documents concerning another person with a different alien file number.

The appeal of the district director's decision will be rejected, and the record remanded to her so that she can adjudicate the case and enter a new decision based on documentation contained in a record of proceeding which can be properly reviewed by the Associate Commissioner. If that decision is adverse to the applicant, the district director will certify her decision to the Associate Commissioner for review accompanied by a properly prepared record of proceeding.

ORDER: The appeal is rejected. The district director's decision is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.