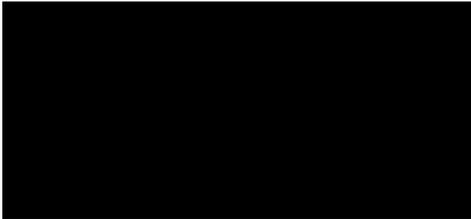




U.S. Citizenship  
and Immigration  
Services

Confidential data deleted to  
prevent unauthorized  
disclosure of personal privacy

CONFIDENTIAL COPY



Hz

FILE:



Office: NEW DELHI, INDIA

Date:

JUL 26 2005

IN RE:

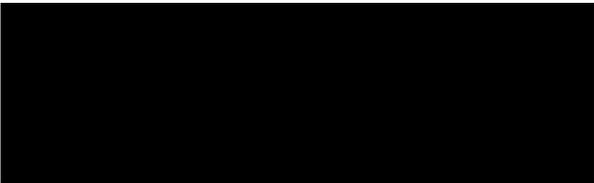
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having sought to procure admission into the United States by willful misrepresentation of a material fact. The applicant was permitted to withdraw his application for admission and was given permission to depart the United States on the next available flight. On July 16, 2001, the applicant was interviewed for a V-1 nonimmigrant visa at the Consulate Section at the American Embassy in New Delhi, India, based on an approved Petition for Alien Relative (Form I-130) filed by his Lawful Permanent Resident (LPR) spouse. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act. He seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to United States and reside with his LPR spouse and U.S. citizen children.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relatives and denied the application accordingly. *See Officer in Charge's Decision* dated June 18, 2003.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act. Counsel states that in order for this section of the Act to apply, a finding must be made that the applicant "willfully" made a misrepresentation with "knowledge of its falsity and with the actual intent to deceive so that an advantage under the immigration laws might be gained to which the alien would not have otherwise been entitled." *Matter of G--G--*, 7 I&N Dec. 161 (BIA 1956).

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

Section 212(i) of the Act provides that:

- (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on August 29, 1997, the applicant presented himself at the Memphis International Airport and applied for admission into the United States as a non-immigrant visitor for pleasure. The applicant presented a valid Indian passport and a valid B-2 non-immigrant visa. The inspecting officer found that the applicant misrepresented his reason for visiting the U.S. Though noted in the applicant's sworn statement, the applicant was never actually found inadmissible under either section 212(a)(7)(A)(i)(I) or 212(a)(6)(C) of the Act because he was permitted to withdraw his application for admission and was returned to Amsterdam. He was never placed in proceedings or issued documentation establishing his inadmissibility. The fact that he was allowed to withdraw his application for admission effectively negated any statement by the inspecting officer regarding issues of inadmissibility. The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C) of the Act, and therefore, the waiver of inadmissibility is unnecessary.

The Officer in Charge's decision is withdrawn, as it has not been established that the applicant is inadmissible. The appeal is sustained and the application for a waiver of inadmissibility declared unnecessary..

**ORDER:** The appeal is sustained