



U.S. Citizenship
and Immigration
Services

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prevent identity compromise
of sensitive information

JUL 27 2005

FILE:

[Redacted]

Office: NEW DELHI, INDIA

Date: **PUBLIC COPY**

IN RE:

[Redacted]

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:

[Redacted]

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 a subsequent appeal before the Administrative Appeals Office (AAO) was remanded to the Officer in Charge due to an incomplete record of proceeding. The complete record of proceeding is now before the AAO. The appeal will be dismissed as the applicant is not admissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States by fraud or willful misrepresentation.

The officer in charge concluded that the applicant does not have the requisite relationship to be eligible for a waiver of inadmissibility and denied the application for waiver. *Decision of Officer in Charge*, dated August 31, 2001.

On appeal, counsel asserts that there were several incorrect findings of fact by the officer in charge and that the applicant did not misrepresent information to obtain a visa in 1980. *See Form I-290B*, filed on September 28, 2001.

In support of the appeal, counsel submits the applicant's first visa denial letter and the revocation letter from the applicant's first visa petition. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record indicates that the applicant was denied an immigrant visa on February 28, 1980 based on former section 212(a)(15) of the Act which prohibited the issuance of a visa to anyone likely to become a public charge. *Visa Denial Letter*, dated February 28, 1980. The applicant was eligible to apply for this visa based on an approved relative petition filed by his brother. *Decision of Officer in Charge* at 1. The record indicates that the applicant's brother passed away on September 17, 1979. *Certificate of Death for Vadilal Rana*. The record does indicate that the applicant was ever approved for this visa nor that he attempted to enter the United States. The applicant's sister subsequently filed a relative petition which was approved and the applicant applied for an immigrant visa based on the approved petition. The application was denied under section 212(a)(6)(C)(i) of the Act. *Visa Denial Letter*, dated June 1, 1999. The applicant filed Form I-601, Application for Waiver of Grounds of Excludability which was denied on August 31, 2001. *I-601 Decision of Officer in Charge*, dated August 31, 2001. The denial letter states:

Subject hid the fact of his brother's death from the document checker and interviewing officer. He claimed that he did not have contact with his brother. Applicant was issued an immigrant visa and attempted to enter the United States. Upon further investigation it was found that the petitioner died on September 17, 1979. The applicant was placed in exclusion proceedings and subsequently left the United States. *Id.*

Counsel asserts that the applicant was never issued a visa and the visa application was denied on public charge grounds on February 28, 1980. This assertion is supported by the record. Counsel asserts that the

applicant never entered the United States. The AAO notes that the file does not include any evidence that the applicant has ever entered the United States or that he was ever placed in exclusion proceedings. Counsel contends that the applicant did not make a material misrepresentation in 1980 to secure a visa. The record does not include any documentation from the 1980 visa interview that evidences the applicant willfully misrepresenting a material fact. The applicant's first visa application was denied on public charge grounds and the record does not indicate that the issue of the petitioning brother's status was raised or that the applicant was aware that he should update the status of his brother in the interview. Furthermore, there is no evidence that the applicant was misrepresenting information when he stated that he did not have contact with his brother.

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.

Based on the record, the AAO finds that the applicant did not misrepresent a material fact and is not inadmissible under section 212(a)(6)(C) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.