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MAR 02 2005

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Afghanistan who was found to be inadmissible to the United States pursuant to 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his 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 denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 22, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in finding that the applicant's spouse would not suffer extreme hardship as a result of the denial of the applicant's waiver application. Counsel further asserts that CIS erred in giving too much weight to the applicant's use of a false passport given that once he arrived in the United States, the applicant stated that he wanted to apply for asylum. *Form I-290B*, dated December 23, 2003.

In support of these assertions, counsel submits a brief, dated January 20, 2004; a declaration of the applicant's spouse; a declaration of the applicant; letters of support; copies of identification and financial documents for the applicant and his family and copies of several articles addressing country conditions in Afghanistan. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that on or about March 8, 1993, the applicant arrived in the United States from Russia without proper documentation. The applicant obtained fraudulent documentation in order to board the airplane and travel to the United States. Once he arrived at JFK Airport in New York, the applicant informed immigration officials that he was seeking asylum in the United States.

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

- (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:

- (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 director's decision indicates that the applicant testified under oath and in a written statement that he had used a fraudulent passport to enter the United States. *See Decision of the Director, supra.* The record does not support the director's finding.

Service records establish that the applicant did not seek to procure admission by fraud or willful misrepresentation when he arrived in the United States on or about March 8, 1993. Rather, the record reflects that immediately upon arrival, the applicant voiced his intent to claim asylum in this country. *See Appellant's Brief in Support of I-290B Appeal of I-601 Waiver of Inadmissibility Status Denial*, dated January 20, 2004, at 22 ("Mr. Hamdard has constantly stated that he used a false travel document just to be able to leave Russia and take a flight to the U.S. At JFK Airport, he did not seek to be admitted into the country on a false travel document or visa, but instead told the Immigration Officers that he was seeking asylum."). Service documents, including a sworn statement, issued at the time of the applicant's arrival confirm the applicant's claim. He was never charged with fraud or misrepresentation, but was found excludable solely based on section 212(a)(7)(B) of the Act for not being in possession of a valid visa or travel document. The record fails to establish that the applicant presented fraudulent documentation in order to procure admission into the United States; the record reflects that the applicant was not in the possession of any travel document upon arrival in the United States. He, therefore, does not require a waiver of inadmissibility, so the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for waiver of inadmissibility is declared moot.