

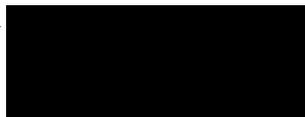
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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H12

FILE:



Office: EL PASO, TEXAS

Date: MAR 23 2005

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under § 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 into the United States by fraud or willful misrepresentation in using a false U.S. birth certificate. The applicant is the parent of four U.S. citizen children, and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i).

The interim district director stated that there was no waiver available for individuals claiming false U.S. citizenship. It appears that the interim district director found the applicant inadmissible pursuant to § 212(a)(6)(C)(ii); thus, the application was denied. There is no waiver available to individuals who have falsely claimed U.S. citizenship subsequent to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (1996). However, false claims to U.S. citizenship arising prior to the enactment of IIRIRA are treated as fraud or misrepresentation, for which a waiver is available pursuant to § 212(i) of the Act. In this case, the act of misrepresentation occurred prior to the enactment of IIRIRA; therefore, the applicant is eligible to apply for a waiver. Nevertheless, the AAO finds that the applicant does not qualify for relief under §212(i) of the Act, since she does not have a qualifying relative.

On appeal, the applicant's representative states that since the applicant committed the act of misrepresentation and also had a qualifying relative prior to the enactment of IIRIRA, Citizenship and Immigration Services (CIS) erred in applying § 212(i) waiver standards developed after IIRIRA was enacted. The representative's assertion is incorrect.

In the Board of Immigration Appeals ("Board") case, *Matter of Cervantes*, 22 I&N Dec. 560, 563-65 (BIA 1999), the Board held that:

[T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General's, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases to aliens who do not qualify under those new rules.

....

[W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

Based on the above holding, it is clear that the application of current § 212(i) standards to the applicant's case is correct.

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 [Secretary] may, in the discretion of the [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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's representative points out that the applicant has U.S. citizen daughters, but the AAO notes that Congress did not include hardship to an alien's children as a consideration for relief under this section. Only hardship to the alien's U.S. citizen or lawful permanent resident (LPR) parent or spouse may be considered in § 212(i) waiver applications. In the instant case, there is no evidence of the existence of a U.S. citizen or LPR spouse or parent. Since the applicant has no qualifying relative, she is ineligible for the waiver. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.