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FILE:



Office: NEW DELHI, INDIA

Date: OCT 24 2005

IN RE:



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 dismissed.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a benefit by fraud or willful misrepresentation. The applicant 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.

The officer-in-charge concluded that the applicant does not have the requisite relationship to a U.S. citizen or lawful permanent resident spouse or child to be eligible for a waiver pursuant to section 212(i) of the Act. *See Decision of the Officer-in-Charge*, dated March 11, 2004.

On appeal, counsel asserts that the officer-in-charge erred in failing to consider the I-601 waiver submitted to overcome inadmissibility based on sections 212(a)(6)(C)(i) and 212(a)(6)(E) of the Act. *See Form I-290B*, dated April 13, 2004.

In support of these assertions, counsel has not submitted a brief or any new evidence. The Form I-290B indicated that a brief would be sent to the AAO, however, counsel subsequently stated that the applicant wishes the appeal to be decided solely on the record. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant provided false passports and birth certificates for two of her children that showed they were under the age of 21. This was done in order to secure derivative immigrant visas for the children, although they were ineligible for derivative visa status as they were older than 21 and one was married. As a result of these prior misrepresentations, the officer-in-charge found the applicant inadmissible to the United States.

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.

The AAO notes that this section only applies to misrepresentations made in one's own visa application. *Foreign Affairs Manual*, Title 9, Section 40.63, Note 4.4. Therefore, the applicant is not inadmissible pursuant to section 212(a)(6)(C) of the Act as the false birth certificates were not submitted for her application, rather they were submitted for her children's derivative visa applications.

The decision of the officer-in-charge does not mention inadmissibility under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), however, the record includes a consular refusal worksheet and interoffice memo stating that the applicant is inadmissible pursuant to this section. Furthermore, counsel addresses this section of inadmissibility, therefore, the AAO will address the issue. The applicant assisted and aided her children in trying to enter the United States by submitting false passports and birth certificates and is inadmissible under section 212(a)(6)(E) of the Act.

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

(i) In general-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

...

(iii) Waiver authorized-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides, in pertinent part, that:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) **(other than paragraph (4) thereof)**, if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Section 203(a)(4) of the Act includes brothers and sisters of U.S. citizens. Therefore, the applicant is not eligible to apply for a waiver pursuant to section 212(d)(11) of the Act as she is seeking admission as an immigrant pursuant to section 203(a)(4) of the Act as the sister of a U.S. citizen.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* 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.