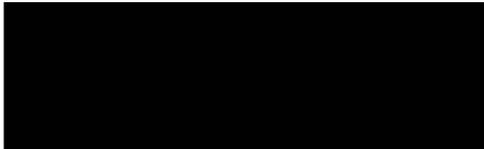




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



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FILE:

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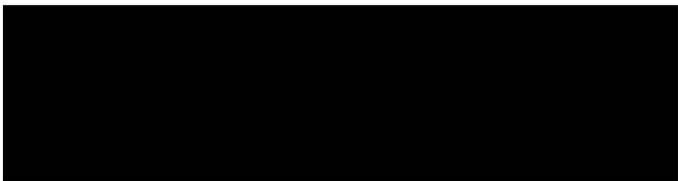
Date: **DEC 19 2006**

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application and it 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.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 Poland 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 procured a visa and admission to the United States by fraud or willful misrepresentation. The applicant is the daughter of naturalized U.S. citizen parents and the mother of U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States with her parents and children.

The district director determined 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 Inadmissibility (Form I-601) accordingly. *See District Director's Decision* dated June 22, 2004.

On appeal, counsel contends that the Service is bound by the immigration judge's determination in immigration proceedings that the applicant was not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. *See Applicant's Brief*, dated July 21, 2004. In support of the appeal, counsel submitted the above-referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

The AAO finds that there is insufficient evidence in the record to determine that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and she is, therefore, not required to apply for a waiver at this time.

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.
-
- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on evidence that the applicant obtained a visa and admission to the United States in 1988 through a fraudulently obtained approved Refugee/Asylee Relative Petition (Form I-730), filed on her behalf by her spouse. The record reflects that the applicant's spouse obtained approval of the Form I-730 by filing a fraudulent Arrival/Departure Record (Form I-94) indicating that he was admitted to the United States as a refugee. There is no evidence in the record to suggest that the applicant was aware of the fraud perpetrated by her spouse and she has never testified to the events surrounding her admission to the United States or the visa application made on her behalf. There is no other evidence in the record or in Citizenship and Immigration Services' (CIS) electronic records that the applicant willfully made a material misrepresentation of fact or willfully committed fraud in applying for her refugee visa or for admission to the United States in 1988.

The AAO notes that without a statement from the applicant or other documentation to confirm that the applicant did indeed willfully make a material misrepresentation of fact or willfully committed fraud, there is currently no evidence that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the AAO finds that the district director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The AAO therefore finds that the applicant is currently not required to apply for a waiver. Since the applicant does not require a waiver, the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

Counsel, in his brief, indicated he was also appealing the district director's denial of the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). However, counsel has only filed one Form I-290B and the district director's denial of the Form I-212 was separate from his denial of the Form I-601. As such, the applicant appears to be inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), and the decision on the Form I-212 is unchanged.

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