



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEWARK

Date: OCT 25 2006

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, denied the waiver application, and it 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 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 admission to the United States by fraud or willful misrepresentation. The applicant is the mother of three U.S. citizen children. 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 with her U.S. citizen children.

The district director concluded that the applicant had failed to establish that a qualifying relative would suffer extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 13, 2005, reissue date March 7, 2005.

The record reflects that, on January 27, 1995, the applicant applied for admission at the Philadelphia, Pennsylvania, Port of Entry. The applicant presented a U.S. Birth Certificate belonging to another, under the name [REDACTED]. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, placed into proceedings and was charged with making a false claim to U.S. citizenship in violation of 18 U.S.C. §§ 911 and 1028(a)(4). The false claim to U.S. citizenship charges were not pursued. On January 31, 1995, the immigration judge found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and ordered her removed. On February 1, 1995, the applicant was removed from the United States and was returned to Mexico. On an unknown date in November 1995, the applicant reentered the United States without lawful admission or parole. On April 10, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Worker (Form I-140) filed by the applicant's U.S. employer. The applicant appeared at Citizenship and Immigration Services' (CIS) Newark District Office on October 12, 2004. The applicant admitted to her previous removal from the United States and to attempting to obtain admission to the United States by making a false claim to U.S. citizenship in 1995.

On December 3, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her children.

On appeal, counsel contends that the applicant's children would suffer extreme hardship if the applicant were denied the waiver, as evidenced by medical documentation and a letter of recommendation from the applicant's vicar. *Form I-290B*, dated February 1, 2005. In support of his contentions, counsel submitted the above-referenced Form I-290B, a psychological report for the applicant's children, medical documentation for the applicant's children and a letter from the applicant's vicar. The entire record was reviewed and considered in rendering a decision in this case.

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) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.

....

(iii) 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 AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act. *Memorandum by [REDACTED] Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.*

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on removal records documentation and the applicant's admitted use of, a U.S. Birth Certificate belonging to another in order to attempt to enter the United States in 1995. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute and will not be considered in this decision. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. The AAO finds that the district director incorrectly stated that a section 212(i) waiver is dependent upon a

showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawful permanent resident spouse, parent *or child* of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing section 212(i) extreme hardship.

The record in the instant case reflects that the applicant's spouse is a native and citizen of Mexico and there is no evidence in the record to suggest that the applicant's spouse is a lawful permanent resident or naturalized U.S. citizen. The record reflects further that the applicant's mother and father are/were natives and citizens of Mexico and there is no evidence in the record to suggest that they are/were lawful permanent residents or citizens of the United States.

Counsel contends that the applicant's U.S. citizen children will suffer extreme hardship. However, the record does not contain evidence that the applicant is married to, or has a parent that is, a lawful permanent resident or citizen of the United States. The AAO finds that the applicant has failed to establish that she has a qualifying family member. Therefore the applicant cannot establish eligibility for a waiver under section 212(i) of the Act.

The burden of proving eligibility for a waiver under section 212(i) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.