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U.S. Citizenship
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Services

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HRZ

DEC 05 2007

FILE:

Office: EL PASO, TX

Date:

IN RE:

Applicant:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), thus the relevant waiver application is moot.

The applicant, [REDACTED] is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding that [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated August 18, 2005.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 Record of Deportable Alien, Form I-213, reflects that the applicant entered the United States without inspection. He was encountered by the Camp Pendleton Military Police as a passenger in a vehicle in a military only area. The applicant was questioned by border patrol and he identified himself as a Greek citizen having entered the United States illegally on or about June 21, 1990 at a place not designated as a port of entry near San Ysidro, California. The document entitled "Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien" (Form I-221S), indicates that the applicant is a native and citizen of Greece and that he entered the United States without inspection near San Ysidro, California, on or about June 21, 1990.

In the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), counsel states that the applicant does not remember signing Form I-274, and if he did, he did not know what immigration benefit he was receiving. In the April 29, 2005 letter, counsel states that no allegations have been made that the applicant used a Greek passport in the name [REDACTED] to enter into the United States or that the passport has a U.S. visa. Counsel states that the applicant entered the United States uninspected and did not use a passport and that he may have misrepresented his name, but this would not have helped him as he was undocumented and subject to deportation. Counsel states that the Greek passport is not material and had not been used for a visa or any immigration purpose in the United States, and the applicant did not receive any benefit under the Act with the passport.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

Based on the evidence in the record, The AAO finds that the director erred in finding the applicant inadmissible under section 212(a)(6)(C) of the Act. Although the record demonstrates that the applicant had a fraudulent Greek passport, it contains no United States visa and fails to establish that the applicant presented the passport to a U.S. border patrol agent or immigration officer in order to gain entry into the United States as the applicant had already entered the United States when he was encountered by the military police and border patrol. The applicant's signing of the Form I-274 Notice of Request for Disposition using the fraudulent Greek identity did not provide him with any benefit under the Act. Thus, the applicant did not willfully misrepresent a material fact so as to procure either admission into the United States or a benefit under the Act.

Based on the record, the AAO finds that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

ORDER: The August 18, 2005 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.