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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date: DEC 27 2007

IN RE:

Applicant:

[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 waiver application was denied by the District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of Ghana 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 with her U.S. citizen husband.

The district director concluded that the applicant 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. *Decision of the District Director*, dated March 13, 2007.

On appeal, counsel for the applicant contends that the applicant did not commit fraud or misrepresentation, thus she is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief in Support of Appeal*, submitted May 9, 2007. Accordingly, counsel asserts that the applicant does not require a waiver of inadmissibility, and the application is moot. *Id.*

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 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 record reflects that the applicant married Mr. [REDACTED] in a customary ceremony on June 23, 1984. The applicant applied for a nonimmigrant B visa at the United States Embassy in Accra, Ghana on November 30, 1989, and she indicated in her application that she was married. The applicant submitted an original order issued by a District Court in Accra, Ghana, dated September 11, 1991, that states that it serves to confirm that the applicant's marriage to Mr. [REDACTED] was customarily dissolved on May 15, 1990. *Accra, Ghana District Court Order*, dated September 11, 1991.

The applicant married her current husband, Mr. [REDACTED] on July 7, 1990. The applicant's husband filed a Form I-130, Petition for Alien Relative, on behalf of the applicant which was approved on October 10,

1990. On the Form I-130, the applicant's husband left blank the portion of the form that requests information regarding the applicant's prior marriages, yet the applicant's husband correctly noted the applicant's marital status as "married." The applicant filed a Form I-485, Application for Permanent Residence, based on the Form I-130 petition. However, on July 9, 1993 the Form I-130 petition was revoked and the Form I-485 application was denied based on the fact that the applicant represented in her Form I-485 application that she had not been married prior to her current marriage. In a letter of denial, the district director, Chicago, stated the following:

[The applicant] filed an application for adjustment of status, based on an approved immediate relative petition on [her] behalf, which indicated [she was] never previously married. Suppression of the fact that [she was] still legally married in Ghana, at the time of [her] interview, constitutes a willful misrepresentation in violation of Section 212(a)(6)(C) [of the Act].

Letter of Denial of I-485 Application, dated July 9, 1993.

The applicant's husband filed a second Form I-130 petition on October 31, 1997, which was approved on March 7, 2007. The applicant concurrently filed a Form I-485 application, yet the application was denied on March 7, 2007 based on a finding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for previously concealing her prior marriage, as discussed above.

On March 5, 2007, the applicant filed the present Form I-601 application for a waiver of inadmissibility.

In denying the application for a waiver, the district director stated that the applicant indicated that she had never been married on her prior Form I-485 application, when in fact she had been married to Mr. [REDACTED]. *Decision of the District Director* at 1. The district director further stated that there was no evidence in the file that she had legally terminated her marriage to Mr. [REDACTED] prior to entering into her current marriage. *Id.* The district director stated that it was determined that the applicant deliberately withheld evidence of her marriage to Mr. [REDACTED] while attempting to acquire permanent residence based on her current marriage. *Id.* at 1-2. Thus, the district director found that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. *Id.*

Upon review, the record does not support that the applicant willfully misrepresented a material fact, such that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record contains documentation that shows by a preponderance of the evidence that the applicant was no longer married to Mr. [REDACTED] on the date that she married her current husband. Specifically, the record contains an original order issued by a District Court in [REDACTED], dated September 11, 1991, that states that it serves to confirm that the applicant's marriage to Mr. [REDACTED] was customarily dissolved on May 15, 1990. The order further states that "since that time any of the parties had the liberty to remarry anybody anywhere and at any time in the world, and that such customary marriage and divorce are recognized under the laws of Ghana." [REDACTED] *District Court Order* at 1 (citing section 41(2) of the Matrimonial Causes Act of 1971 (Act. 367)). The AAO finds no apparent irregularities in the court's order, or other cause to question the authenticity of the document.

The U.S. Department of State Foreign Affairs Manual states that, in Ghana, "[p]roper documentation of the dissolution of a customary marriage is a decree, issued by a high court, circuit court or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), stating that the marriage in question was dissolved in accordance with customary law." 9 FAM Appendix C, Ghana. The order from the district court submitted by the applicant adheres to the standard provided in the Foreign Affairs Manual, thus it serves as evidence that that applicant's customary marriage to Mr. [REDACTED] was customarily dissolved on May 15, 1990.

As the applicant's marriage to Mr. [REDACTED] was dissolved on May 15, 1990, she was no longer married as of July 7, 1990, the date she entered into her current marriage. Therefore, the record supports that the applicant's current marriage is valid, and any representations she made that she was not married to Mr. [REDACTED] as of the date she married her present husband were accurate.

The applicant represented on her Form I-485 application of March 31, 1997 that she had never been married prior to her current marriage. However, while the record supports that the applicant did misrepresent the fact of her prior marriage, this fact is not material to her eligibility for adjustment of status. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 US 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). The applicant has shown that her marriage to Mr. [REDACTED] was dissolved prior to her current marriage. Thus, her current marriage serves as a valid basis for her eligibility for adjustment of status. The record contains no indication that an examination of the applicant's prior marriage has revealed other grounds for inadmissibility or ineligibility, such that her failure to reveal the marriage cut off a material line of inquiry in the adjudication of her application for adjustment of status.

As the applicant did not misrepresent a fact that is material, she is not inadmissible under section 212(a)(6)(C)(i) of the Act. The record contains no evidence that the applicant is inadmissible under other provisions of the Act. Thus, the applicant does not require a waiver under section 212(i) of the Act, and her Form I-601 application will be declared moot.

ORDER: The decision of the district director is withdrawn, the Form I-601 application is declared moot, and the appeal is dismissed.