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

PUBLIC COPY

FILE: [redacted] Office: LOS ANGELES, CA Date: FEB 22 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.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 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

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 March 16, 2005.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship if the applicant were refused a waiver. *See Applicant's Brief,* dated May 9, 2005. In support of the appeal, counsel submits the referenced brief, medical documentation for the applicant's spouse and a psychological report for the applicant's spouse. 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.
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> . . . .
>
> (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 a fingerprint-based Federal Bureau of Investigations (FBI) inquiry indicating that, on January 13, 1969, immigration officers arrested the applicant in El Paso, Texas and charged her with presenting another's document to gain admission. The FBI inquiry indicated that, on August 3, 1970, immigration officers arrested the applicant again in El Paso, Texas and charged her with attempted entry using another's immigration documents. The FBI inquiry also indicates that on both occasions the government declined to prosecute the charges and permitted the applicant to return to Mexico voluntarily. On June 5, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office and testified that she had never sought to procure admission, a visa or other immigration document by misrepresentation or fraud. There is no other evidence in the record or in CIS' electronic records that the applicant has ever attempted to gain admission to the United States by fraud. An interview notice indicates that, on August 29, 2001, the applicant was scheduled to appear at the CIS Los Angeles, California District Office in order to make a statement in regard to the FBI inquiry information regarding the two attempted entry charges in 1969 and 1970. However, there is no sworn statement by the applicant or detailed notes regarding such an interview in the record. On appeal, the applicant does not indicate in her affidavit what exactly occurred to cause her arrests or the charges identified by the FBI inquiry. The AAO notes that without a statement from the applicant or other documentation to confirm that the applicant did indeed attempt to enter the United States by 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.

Therefore the applicant is 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. However, the AAO notes that the applicant will need to file a waiver application if it is later determined that there is evidence that she has attempted to enter the United States by fraud.

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