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U.S. Citizenship
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FILE: [Redacted]

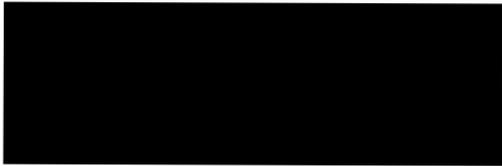
Office: ATLANTA, GA

Date: JAN 08 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:



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, Atlanta, Georgia, 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 The district director's decision will be withdrawn and the appeal will be dismissed as moot.

The record reflects that the applicant is a native and citizen of Nigeria 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 obtaining a false social security card in order to gain employment in the United States. The record indicates that the applicant is married to a United States citizen spouse and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen husband.

The district director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated April 14, 2005.

On appeal, the applicant, through counsel, asserts that the district director abused her discretion in denying the applicant's Form I-601. *Form I-290B*, filed May 12, 2005. Counsel claims that the denial of the applicant's admission into the United States would result in extreme hardship to her United States citizen husband because they have been trying to start a family for the last 16-17 years and are currently undergoing fertility treatments in the United States.

The record includes, but is not limited to, counsel's statement, a letter from Dr. [REDACTED] stating the applicant has undergone fertility treatments, the applicant's adjustment of status application, photos of the applicant and her husband, and letters and documentation relating to the applicant's attempts to become pregnant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

(i) In general. - 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.

....

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

Section 212(i) of the Act provides, in pertinent part, 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 immigrant 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...

On appeal, counsel addresses the issue of extreme hardship to the applicant's United States husband. However, the main issue is whether the applicant is inadmissible. In order for the applicant to be inadmissible under section 212(a)(6)(C) of the Act, the fraud or willful misrepresentation of a material fact must be made for a benefit under the Act, and to an authorized official of the United States government. There is no indication in the record of proceedings that the applicant ever used the false social security card for any purpose, much less to gain a benefit under the Act. Additionally, the applicant claims on her Biographic Information (Form G-325 A) that she has been unemployed since 1995.

On July 2, 2003, the applicant testified that she met a man, named [REDACTED], at a church revival and he "gave [her] the number of a man who could help [her]. The man's name was [REDACTED]. She called [REDACTED] an [sic] [REDACTED] told [her] to meet him at [REDACTED] with [her] passport, which [she] did. Then, he collected [her] passport from [her] and told [her] that he would be back, and when he came back and told [her] that [she had] to go to the social security office, which [she] did. He told [her] to stay on the line and when it was [her] turn, [she] should give [her] papers. And when [she got] there, [she] should fill a form and give [her] papers to the lady on the counter. [She] met a lady there. The lady gave [her] a form to write [her] name, which [she] did. And she gave [the applicant] back a form, that in case [she] didn't see [her] card in 7-14 days, [she] should call the number, but [she] received the card, so [she] just destroyed the letter." She testified that she paid [REDACTED] \$250 for the social security card and that she thought the card was "legal" since she applied for the card at the social security office.

The Department of State Foreign Affairs Manual offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. For a misrepresentation to fall within the purview of INA § 212(a)(6)(C)(i), it must have been practiced on an official of the United States government, generally speaking, a consular officer or an immigration officer. See 9 FAM 40.63 N4.3.

In *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), the Board of Immigration Appeals [Board] stated:

It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found.

In *Matter of Cervantes*, 22 I&N Dec. 560, 562 (BIA 1999), the respondent was found to be inadmissible when he purchased a counterfeit Texas birth certificate, with the intent to obtain a United States passport, which he then used to travel into and out of the United States and to obtain employment. The Board found that "[b]y fraud and by willful misrepresentation of a material fact, [the respondent] sought to procure both 'documentation' and 'other benefits' under the Act." *Id.* at 563. The "other benefits" included travel in and out of the United States on the passport, a clear benefit under the Act.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation to a United States government official when she bought the false social security card. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is also moot and will thus not be addressed.

ORDER: The district director's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot.