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U.S. Citizenship  
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JUN 26 2007  
Date: JUN 20 2007

FILE:

Office: NEW YORK, NY

IN RE:

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.

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the district director's decision will be withdrawn and the application declared moot.

The applicant is a native of Martinique and a citizen of France 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 having procured admission into the United States by fraud or willful misrepresentation on May 27, 1998. The applicant is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the negative emotional impact that the applicant's mother would endure as a result of the refusal of the applicant's admission to the United States does not constitute extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated January 18, 2005.

On appeal, counsel asserts that a waiver application is not needed in the applicant's case because no fraud was committed. In the alternative, he states that the applicant's mother would suffer extreme hardship as a result of the applicant's inadmissibility. *Form I-290B*, received February 16, 2005.

Prior to reviewing the applicant's waiver request, the AAO turns to a consideration of whether the applicant is inadmissible to the United States and requires a waiver.

The record indicates that the applicant lived in the United States with her mother for a period when she was younger. *Applicant's Affidavit*, dated July 26, 2002. The applicant submitted copies of pages from a previous passport issued in 1990, which expired in 1995. The passport was issued by the French consulate in New York City and shows a residence in Brooklyn, New York. At some point after 1990, the applicant left the United States because her mother was having personal problems. *Id.* The record is not clear as to how the applicant first entered the United States as a young girl. The applicant states that after leaving the United States, she lived with her father in Martinique and then her aunt in Haiti. On May 27, 1998, the applicant was admitted to the United States as a nonimmigrant under the Visa Waiver Program. She contends that she returned to the United States not to stay but simply to spend some time with her mother. When it was time for her to leave, the applicant asserts, her mother wanted her to stay in the United States because of the opportunities available to her. *Id.*

On appeal, counsel reiterates the applicant's claim that she was only coming to visit the United States and did not intend to stay. Counsel states that he attended the applicant's adjustment interview and that at the time of her interview, the applicant informed the interviewing officer that her intention at the time of her 1998 entry was to stay in the United States for less than 90 days. He contends that the applicant committed no fraud at the time of her 1998 admission and should never have been required to file the Form I-601, Application for Waiver of Ground of Excludability. *Form I-290B; Attorney's Brief*, dated February 15, 2005.

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.

Whether the applicant committed fraud or willfully misrepresented a material fact when she entered the United States as a nonimmigrant under the Visa Waiver Program on May 27, 1998 comes down to her intent at the time of her admission, i.e., whether at the time of her nonimmigrant admission she was an intending immigrant. Evidence related to the applicant's intent at the time of admission includes her affidavit, which states she was not an intending immigrant on May 27, 1998, and the two Form I-130s, Application for Alien Relative, filed on her behalf by her mother. The record does not contain a sworn statement taken from the applicant at the time of her adjustment interview and the interview notes from the Form I-485 Processing Worksheet are not clearly articulated and, therefore, are not probative for the purposes of this proceeding.

With regard to immigrant intent, the AAO notes that the Department of State (DOS) has developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...taking up permanent residence." *DOS Foreign Affairs Manual*, § 40.63 N4.7-1(3). Under this rule, "when violative conduct occurs more than 60 days after entry into the United States, the State Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility." *Id.* at § 40.63 N4.7-4. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be instructive in the present case.

The applicant entered the United States as a nonimmigrant on May 27, 1998. The first indication of the applicant's immigrant intent occurred when her mother attempted to file a Form I-130 on her behalf in February 1999. *Form I-130 Rejection Notice*, dated February 24, 1999. The Form I-130 was officially filed on April 2, 1999. *Form I-130*, dated January 20, 1999.

In the present case, the applicant benefited from a Form I-130 and applied for lawful permanent residence after entering on the Visa Waiver Program. The application for permanent residence is violative conduct under the 30/60 day rule. However, as just noted, the earliest point at which the record establishes that the applicant had immigrant intent was January 20, 1999, the date on which the Form I-130, filed on April 2, 1999, was signed by the applicant's mother. Both the signing and submission of the Form I-130 occurred approximately eight months after the applicant's admission under the Visa Waiver Program, well beyond the 60 day cutoff relied upon by the Department of State in establishing inadmissibility under section 212(a)(6)(C)(i) of the Act. Therefore, although the record shows that the applicant's mother was a lawful permanent resident living in the United States at the time of the applicant's entry, the record does not establish that the applicant intended to circumvent the immigrant visa issuance process by entering the United States under the Visa Waiver Program.

As the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether her

mother has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed, the district director's decision will be withdrawn, and the application mooted.

**ORDER:** The appeal is dismissed. The district director's decision is withdrawn. The application is moot.