



U.S. Citizenship  
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Services

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FILE:

Office: CHICAGO, IL

Date: MAR 27 2007

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 Interim District Director, Chicago, Illinois, 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 The district director's decision will be withdrawn and the appeal will be dismissed as moot.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 Poland 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 using a false Departure Record (I-94) to enter the United States. The record indicates that the applicant is married to a naturalized United States citizen and 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. *Interim District Director's Decision*, dated October 24, 2003.

On appeal, the applicant, through counsel, asserts that the Interim District Director erroneously found that the applicant "knowingly" entered the United States on a fraudulent I-94 card. *Counsel's Brief*, filed March 30, 2004. Additionally, 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 she provides care to her disabled husband. *Id.*

The record includes, but is not limited to, counsel's brief, affidavits by the applicant and her husband, the I-94 card, a Record of Sworn Statement, a letter from [REDACTED] stating the applicant's husband is permanent disabled and suffers from persistent pain, the applicant's marriage certificate, and photos of the applicant and her husband. 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 asserts that the applicant is admissible to the United States because she did not "knowingly" misrepresent a material fact in order to enter the United States. In order for the applicant to be inadmissible under section 212(a)(6)(C)(i) 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.

On June 27, 2000, the applicant testified that she entered the United States through Niagara Falls on March 28, 1990. She stated she entered the United States as a passenger in a car, and "she did not show [the Immigration Officer]" any documents to gain entry into the United States and did not speak to the Immigration Officer. She does not remember what documents the driver showed to the Immigration Officer, but she stated that "the driver talked to [the Immigration Officer] and he showed him some document." She stated that a couple of days after entering the United States, she noticed the I-94 card in her passport. She used her passport to obtain a social security card "about two weeks after [she] came to" the United States. She testified that she paid \$1500 to have a smuggler bring her to the United States.

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 with 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.

Counsel relies on *Matter of Gabouriel*, 13 I&N Dec. 742 (BIA 1971), where the Board of Immigration Appeals found that since the respondent was sleeping when she entered the United States and was not questioned by an immigration inspector, there was no fraud or misrepresentation involved in her entry into the United States. The applicant did not personally misrepresent anything to the immigration officer, since she claims she did not provide her passport, with the fraudulent I-94, to the immigration officer and did not even speak to the officer.

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 entered the United States. The AAO thus finds that the Interim 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.