



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: ATLANTA, GA
(RELATES)

Date: MAY 15 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 waiver application was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan 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 November 14, 1989. The applicant has three U.S. citizen children 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 applicant had not established the extreme hardship requirement under 212(h) of the Act in order to obtain a waiver of inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated July 15, 2005.

The AAO notes that the district director adjudicated the applicant's waiver application under the incorrect section of law. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver clause associated with this section of law is 212(i), not 212(h).

On appeal, counsel asserts that the applicant clearly meets the requirements of the extreme hardship standard for a waiver application. *Counsel's Brief*, not dated.

The record indicates that on November 14, 1989, the applicant presented a fraudulent visitor's visa to an immigration inspector at the Hartsfield International Airport in an attempt to gain entry into the United States.

Before the AAO can determine whether extreme hardship would be imposed on a qualifying relative, it must first determine whether a qualifying relationship exists and as a consequence if the applicant is eligible to apply for a section 212(i) waiver of inadmissibility.

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.

As just noted, to be statutorily eligible to apply for a section 212(i) waiver of the bar to admission resulting from the violation of section 212(a)(6)(C) of the Act, the applicant must first establish that he is the spouse or son of a U.S. citizen or lawful permanent resident (LPR). Hardship experienced by the alien and his three U.S. citizen children due to his inadmissibility is not considered in section 212(i) waiver proceedings. In the present case, the documentation in the record fails to establish the existence of a U.S. citizen or LPR spouse or parent. Accordingly, the applicant is statutorily ineligible to apply for a waiver of inadmissibility under 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.