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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: OCT 01 2007

IN RE:

Applicant:

[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.

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), thus the relevant waiver application is moot.

The applicant, [REDACTED] is a native and citizen of El Salvador 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding that Mr. [REDACTED] failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated April 7, 2005.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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.

The record reflects that the applicant jumped the international boundary fence near Calexico, California, Port of Entry. During a routine bus check at the Highway 86 Border Patrol Checkpoint, the applicant presented to the border patrol agent a fraudulent Mexican passport and evidence of having legally immigrated. The applicant later revealed to the border patrol agent that he had purchased the Mexican passport and counterfeit immigration stamp for \$300. He had been apprehended near Salton City, California. *Record of Deportable Alien, Form I-831*.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

It is clear that the applicant presented fraudulent documents to a border patrol agent; however, the documents in the record indicate that the applicant had already entered the United States when he presented the fraudulent documents to the border patrol agent. *See Ex parte Chow Chok*, 161 F. 627 (N.D.N.Y.), *aff'd*, 163 F. 1021 (2d Cir.1908) (no "entry" made where "aliens had crossed the border and proceeded for a quarter of a mile along railroad tracks, but had been under the surveillance of border inspectors from before the time they crossed until their actual physical capture"); *U.S. v. Pacheco-Medina*, 212 F.3d 1162 (9<sup>th</sup> Cir. 2000) (no

“entry” where aliens crossed the border line, but were at once surrounded by officers and effectually deprived of their liberty and prevented from going at large within the United States); *U.S. v. Ruiz-Lopez*, 234 F.3d 445, 448 (9<sup>th</sup> Cir. 2000) (“An alien's mere physical presence on United States soil . . . is insufficient to convict him of being found in the United States in violation of 8 U.S.C. § 1326. Rather, the government must also establish that the alien entered the United States free from official restraint at the time officials discovered or apprehended him.”) (citations omitted);

Furthermore, in *Matter of Pierre*, 14 I. & N. Dec. 467, 468 (1973) the BIA stated that:

An “entry” involves (1) a crossing into the territorial limits of the United States, i.e. physical presence; plus (2) inspection and admission by an immigration officer; or (3) actual and intentional evasion of inspection at the nearest inspection point; coupled with (4) freedom from restraint.

(citations omitted)

In defining “restraint,” the BIA included surveillance that is unknown to the alien. The BIA states that an alien has made an entry despite having crossed the border with the intention of evading inspection, if he “lacks the freedom to go at large and mix with the population.” (citing *Ex parte Chow Chok*, 161 Fed. 627, 629-30, 632 (N.D.N.Y.), *aff'd* 163 Fed. 1021 (C.A. 2, 1908).

Based on the evidence in the record, and the decisions discussed above, the district director erred in finding the applicant inadmissible under section 212(a)(6)(C) of the Act. Although the applicant presented fraudulent documents to a border patrol agent, those documents were shown to the border patrol agent after the applicant had already entered the United States, and the record suggests that the applicant had been free from restraint at the time of entry into the United States. Thus, the applicant did not willfully misrepresent a material fact so as to procure either admission into the United States or a benefit provided under the Act.

Based on the record, the AAO finds that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

**ORDER:** The April 7, 2005 decision of the district director is withdrawn. The appeal is dismissed as the underlying application is moot.