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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES Date: DEC 04 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter 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 The district director's decision will be withdrawn and the appeal will be dismissed as moot.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 matter will be returned to the field office director for continued processing.

The record reflects that the applicant is a native and citizen of Colombia 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 willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, undated.¹

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if she were refused admission to the United States. In addition, the applicant claims that at no time did she willfully misrepresent her marital status.

Section 212(a)(6)(C)(i) of the Act provides:

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.

After a complete review of the record, the AAO concludes that the applicant did not willfully misrepresent a material fact in order to procure an immigration benefit.

In this case, the record shows that the applicant entered the United States on August 19, 1999, using a K-1 fiancée visa. On August 27, 1999, the applicant married [REDACTED], a U.S. citizen. On January 13, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on her marriage to [REDACTED]. On October 27, 2000, the applicant and [REDACTED] divorced. On July 24, 2001, after the applicant and [REDACTED] were interviewed by a former INS officer, the applicant's adjustment application was approved. The applicant signed a Notice to Conditional Permanent Residents which stated, in its entirety:

¹ According to the district director's denial of the applicant's Application for Adjustment of Status, the applicant's waiver application was denied on August 21, 2006. *Decision of the District Director* at 2, dated September 28, 2006.

Pursuant to Section 216 of the Immigration and Nationality Act, you have been granted conditional permanent residence in the United States as of the date that you were admitted or adjusted to such status. You and your spouse must file a joint petition to have the conditional basis of your status removed. The petition must be filed within the ninety (90) day period immediately preceding the second anniversary of the date you were granted conditional permanent resident status. If a petition to remove the conditional basis of your status is not filed within this period, you[r] conditional permanent residence status will be terminated automatically and you will be subjected to deportation from the United States.

On February 19, 2003, the applicant signed a new Notice to Conditional Permanent Residents and hand-wrote in capital letters at the bottom of the Notice, "I'm divorce[d]." On April 14, 2003, the applicant filed a Petition to Remove the Conditions on Residence (Form I-751). In her petition, she checked the box that stated, "I entered into the marriage in good faith, but the marriage was terminated through divorce/annulment." She submitted a copy of her divorce decree, indicating she and [REDACTED] were divorced on October 27, 2000. While her Form I-751 was pending, on October 24, 2004, the applicant married [REDACTED] a U.S. citizen.

On February 28, 2005, the district director issued the applicant a Notice of Intention to Rescind Adjustment of Status under Section 246 of the Immigration and Nationality Act. The Notice stated that the applicant did not disclose to the interviewing officer that her marriage to [REDACTED] had terminated and that she had signed a Notice to Conditional Permanent Residents. Therefore, the district director concluded the applicant willfully misrepresented a material fact in order to obtain an immigration benefit.

On May 18, 2006, the district director rescinded the applicant's permanent resident status. The district director stated that the applicant had not answered the previous notice of intent and, therefore, found the facts to be true as set forth in the notice of intent.

A review of the record, however, indicates that the applicant did, indeed, attempt to respond to the allegations set forth in the notice of intent, and it is unclear whether her response was ever sent to the district director.² According to her affidavit in the record, the applicant explained that she had married [REDACTED] in good faith, but that after living together, they discovered irreconcilable differences. She explained that at the time of her interview with the INS officer, she thought she was still eligible to adjust her status because they did, indeed, have a "real marriage." She further explained that she and [REDACTED] remained friends after the divorce, and that he went with her to the interview, as requested in the notice. The applicant contends that during the interview, she and

² There are two affidavits from the applicant in the record which are almost identical. One of the affidavits specifically mentions the Notice of Intention to Rescind Adjustment of Status, and, therefore, appears to have been written in response to the February 28, 2005 notice. *Affidavit of [REDACTED]* ("I notice that in your letter you make an emphasis on the fact that I signed a NOTICE TO CONDITIONAL PERMANENT RESIDENTS. . .").

answered all of the officer's questions truthfully and did not evade any questions in any way, but that at no point did the officer ask whether they were still married. Specifically addressing the notice of intent's reference to the Notice to Conditional Permanent Residents that she had signed, the applicant responded that she thought the notice she signed merely meant that she and [REDACTED] would have to file a joint petition two years later. She stated that she "couldn't imagine that by signing this notice that someone later would say that [she] was lying about still being married [to [REDACTED]]." The applicant asserts that at no time did she willfully misrepresent her marital status.

There is no evidence in the record indicating that the INS officer asked the applicant or Mr. [REDACTED] whether they were still married at the time of the interview. In addition, the Notice to Conditional Permanent Residents that the applicant signed on July 24, 2001, does not specifically mention the applicant's current marital status. Therefore, there is no evidence the applicant willfully misrepresented her marital status. Instead, the applicant accurately indicated that she was divorced in her Petition to Remove the Conditions on Residence and included a copy of her divorce decree which clearly stated the effective date of divorce as October 27, 2000. Furthermore, on February 19, 2003, when the applicant signed a second Notice to Conditional Permanent Residents, she handwrote in capital letters at the bottom of the page, "I'm divorce[d]." Under these circumstances, the evidence does not suggest the applicant was attempting to hide the fact that she and [REDACTED] had divorced. As such, the evidence does not support the finding that the applicant willfully misrepresented her marital status.

The AAO finds that the district director erred in finding that the applicant willfully misrepresented a material fact. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the district director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act is moot and will 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. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.