



U.S. Citizenship
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Services

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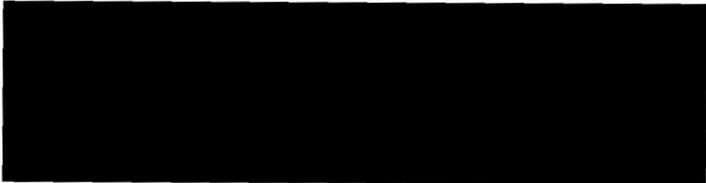
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

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, 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center 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), and the relevant waiver application is thus moot. The matter will be returned to the Director for continued processing.

The applicant is a native and citizen of the Philippines 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized 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 in the United States with her spouse.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Director*, dated July 6, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred in finding the applicant inadmissible and in finding that the applicant had failed to meet the burden of establishing extreme hardship to her qualifying relative, necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant; marriage certificates for the applicant; a naturalization certificate for the applicant's spouse; a divorce certificate for the applicant; tax statements for the applicant and her spouse; Forms W-2 for the applicant and her spouse; earnings statements for the applicant and her spouse; bank statements for the applicant and her spouse; credit card bills; and employment letters for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on June 24, 1992 the applicant was admitted to the United States on a B-2 visitor's visa. *Form I-94, Departure Card*. On December 18, 1993 the applicant married [REDACTED] *Marriage Certificate*. The record includes a certificate of naturalization for [REDACTED] with a naturalization date of February 3, 1989. *Naturalization Certificate*. On April 14, 1994, [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. According to the Director's decision in reference to the Form I-485, Application to Register Permanent Residence or Adjust Status, filed on March 17, 1997 the Form I-130 was submitted with a photo-substituted Certificate of Naturalization. *Decision of the Director*, dated July 6, 2006. According to the Director, the naturalization certificate belonged to the applicant's husband's brother and the photograph was that of the applicant's husband. *Id.* In a February 1, 1996 statement, [REDACTED], through counsel, withdrew his Form I-130 on behalf of the applicant. On April 5, 1996 the applicant divorced [REDACTED]. *Divorce Certificate*. On June 14, 2006, the Form I-130 filed by [REDACTED] on April 14, 1994 was administratively closed.

According to the applicant, [REDACTED] and [REDACTED] are the same person and she believed [REDACTED] to be a nickname and that her husband's real name was [REDACTED]. *Statement from the applicant, undated*. The applicant states that her husband used his brother's naturalization certificate under the name [REDACTED] while attaching his own photograph. *Id.* The applicant states that it was only after the petition was denied by former Immigration and Naturalization Service (INS), that she learned about what her husband had done and filed for divorce. *Id.*

On February 28, 1996, [REDACTED] naturalized. *Naturalization Certificate*. In May 1996, the applicant and her ex-husband were reunited. *Id.* They married on October 8, 1996. *Marriage Certificate*. The AAO observes that the applicant's spouse used the name [REDACTED] on this marriage certificate. *Id.* On March 17, 1997 the applicant's spouse, [REDACTED] filed a second Form I-130 on behalf of the applicant. *Form I-130*. On June 22, 2001 the Acting District Director, Miami, Florida denied this Form I-130 based on the failure of the applicant and her spouse to appear for a June 20, 2001 interview regarding the visa petition. *Decision of Acting District Director*, dated June 22, 2001. However, on June 14, 2006 this same Form I-130 was approved by the Director, California Service Center. *Approval stamp on Form I-130*. On July 6, 2006 the Director of the California Service Center denied the applicant's Form I-601, Application for Waiver of Grounds of Excludability, based on the applicant's failure to show that her qualifying relative would suffer extreme hardship. *Decisions of the Director*, dated July 6, 2006.

The applicant has appealed the denial of the Form I-601, and counsel asserts that she is not inadmissible because at the time of the 1994 filing of the initial Form I-130, she was unaware that her husband had changed the naturalization certificate. *Attorney's brief*. Counsel asserts that the applicant did not commit fraud. *Id.* He further states that her spouse would suffer extreme hardship upon the applicant's removal from the United States. *Id.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The AAO notes that the applicant's spouse filed a Form I-130 on behalf of the applicant in 1994 using his brother's naturalization certificate. *Statement from the applicant*, undated. While the AAO finds the applicant's spouse to have committed a misrepresentation, it notes that he is the individual who filed the Form I-130, not the applicant. The applicant filed a Form I-485 based on the approved Form I-130 and stated that her husband's name was [REDACTED]. *See Form I-485.*

In order to violate section 212(a)(6)(C) of the act, the misrepresentation must be willful. According to the applicant, she believed [REDACTED] to be a nickname and that her husband's real name was [REDACTED]. *Statement from the applicant*, undated. She states that she learned about what her husband had done only after the petition was denied by former Immigration and Naturalization Service (INS). *Id.* In support of the applicant's assertions that she believed her husband's name to be [REDACTED] at the time she filed her first Form I-485, the record offers the following documentary evidence: the Form I-134, Affidavit of Support, submitted by the applicant's spouse using the name [REDACTED] which he signed under that identity in front of a notary public; a Bank of America letter and bank statements addressed to the applicant and [REDACTED]; a rental agreement, dated January 15, 1994, issued to the applicant and [REDACTED]; receipts for rent payments issued to the applicant and [REDACTED]; and the applicant's 1993 marriage certificate that states the groom's name as [REDACTED]. Based on this evidence, the AAO does not find the record to establish that the applicant willfully misrepresented a material fact in relation to the filing of the first Form I-130 benefiting her or her subsequent submission of the first Form I-485. Therefore, she is not inadmissible under section 212(a)(6)(C)(i) of the Act and the waiver application filed pursuant to section 212(i) of the Act is moot.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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 is not required to file the waiver. Accordingly, the appeal will be dismissed as the underlying waiver application is moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The Director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.