



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 10 2008

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.

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the director for continued processing.

The applicant is a native and citizen of Jamaica 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her U.S. citizen husband.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated July 28, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, received August 21, 2006.

The record contains a brief from counsel in support of the appeal; a statement from the applicant; statements from the applicant's husband; copies of tax and banking records for the applicant and her husband; copies of birth records for the applicant and her husband; a copy of the applicant's marriage certificate; documentation relating to the applicant's employment; copies of registration documents for the applicant's and her husband's automobiles, and copies of photographs of the applicant and her husband. 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.

Upon review, the record of proceeding does not support that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The director noted in his decision to deny the applicant's Form I-485 application that she "**entered the United States with a fake passport and or visa (Fraud.)**" *Decision of the Director regarding Form I-485 Application*, dated July 28, 2006 (emphasis in original). However, the director did not

describe any facts surrounding the applicant's alleged entry with fraudulent documents, or reference other documents that reflect that the applicant entered the United States by fraud or misrepresentation.

All other documentation in the record that references the manner of the applicant's entry states that she entered without inspection. The record contains no evidence that the applicant admitted to committing fraud or misrepresentation to procure a benefit under the Act. Nor does the record contain contemporaneous documentation of a U.S. Department of Homeland Security Officer's finding that the applicant committed fraud or misrepresentation.

The single statement from the director in his decision to deny the applicant's Form I-485 application is not sufficient to show by a preponderance of the evidence that the applicant committed fraud or misrepresentation. Accordingly, the record does not support that she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

The record does not reflect that the applicant is inadmissible under any other provision of the Act. Therefore, she does not require a waiver of a ground of inadmissibility, and the present Form I-601 application for a waiver is moot. Accordingly, the appeal will be dismissed.

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.