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U.S. Citizenship
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FILE: [REDACTED] Office: CHICAGO, IL

Date: **DEC 16 2008**

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

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 Acting District Director, Chicago, Illinois, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant, a native and citizen of Mexico, attempted entry to the United States on January 23, 1991 using a fraudulent document, namely, an amnesty card that was not validly issued to her. She was thus found 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 attempting to procure entry to the United States by fraud or willful misrepresentation.¹ The applicant seeks a waiver of

¹ Counsel, in her letter to USCIS-Chicago, states that the applicant “does not recall making any misrepresentation in 1991, or at any other time.... In addition, I do not believe a misrepresentation more than ten years ago would render [the applicant] inadmissible....” Letter from [redacted], dated May 26, 2005.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

It is clear to the AAO that the applicant misrepresented herself, as documented by the Record of Deportable Alien, dated January 23, 1991, and by the applicant’s own admission to a senior immigration inspector on January 23, 1991. As she stated, in pertinent part:

Q: What is your true, correct and complete name?

A: [redacted]

Q: What are your parents name and what is their citizenship?

A: They are [redacted] and [redacted] and they are both mexicans.

Q: Do you have any papers to enter the United States legally?

A: No.

Q: How were you planning to enter the United States?

A: With the card that you have their, the rightful owner, [redacted], loan me the card to try and come in and look for work.

Record of Sworn Statement, dated January 23, 1991

Although the name provided in the Record of Sworn Statement, [redacted] appears to be different than the name that appears on the applicant’s immigration paperwork, it is clear to the AAO that [redacted] and [redacted] are one in the same, as confirmed by the applicant’s U.S. citizen son’s birth certificate, which lists his mother as [redacted], the applicant’s U.S. citizen son’s Form G-325A, Biographic Information, which lists his mother as [redacted] and the Form I-485, Application to Adjust Status, executed by the applicant, which lists her

inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen adult son, [REDACTED]²

The district director concluded that the applicant was statutorily ineligible for a waiver and consequently denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated January 12, 2005.

In support of the appeal, counsel for the applicant submits a brief, dated February 8, 2006, and referenced attachments.³

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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

parents as [REDACTED] and [REDACTED]. Moreover, the FBI Identification Record confirms that alias names for [REDACTED] include, but are not limited to, [REDACTED] and [REDACTED].

The AAO notes that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As such, based on the record, the AAO concurs with the acting district director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

² On the Form I-601, the applicant indicated that she has a second child who is a U.S. citizen, [REDACTED]. As no evidence of his U.S. citizenship was provided, the AAO will proceed with the assumption that the applicant has only one U.S. citizen child, [REDACTED]. Irrespective of whether the applicant has one or two U.S. citizen children, the applicant is statutorily ineligible for a waiver, as further discussed below.

³ Counsel asserts in her brief that the Acting District Director referenced an incorrect Alien number for the applicant. Based on a review of the record, the applicant's A files have been consolidated. As such, the correct Alien number for the applicant is [REDACTED] as referenced in the Acting District Director's Decision and in the instant decision.

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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the instant appeal, the applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(i) of the Act exists, namely, a U.S. citizen or lawful permanent resident spouse and/or parent. As such, the instant appeal is dismissed.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.