

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE: [REDACTED]

Office: NEWARK, NJ

Date: JUL 28 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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India. The record indicates that during the I-485, Application to Register Permanent Residence or Adjust Status (I-485) interview in August 2006, the applicant admitted that he had entered the United States in November 2003 under the Visa Waiver Pilot Program, by presenting to a port of entry officer a photo-substituted passport from the United Kingdom containing an assumed name and date of birth. The applicant was thus 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 procured entry into the United States by fraud or willful misrepresentation.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, namely his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 4, 2007.

On October 4, 2007, counsel for the applicant filed the Form I-290B, Notice of Appeal (Form I-290B). Counsel also indicated on the Form I-290B that he would need 30 days to submit a brief and/or evidence to the AAO in support of the appeal. On October 25, 2007, counsel submitted a memorandum and referenced exhibits.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 immigrant 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 indicates that on June 23, 2008, the applicant's U.S. citizen spouse sent a letter to the AAO, requesting a withdrawal of the instant appeal. With respect to appeals relating to Form I-601 applications,

counsel and/or the applicant are the only individuals authorized to request that an appeal be withdrawn.¹ As such, the AAO is unable to withdraw the instant appeal based on the applicant's spouse's written request. However, as it appears that the applicant's spouse is no longer supporting the applicant's Form I-601 application, the AAO is unable to proceed with a review of the instant appeal, as outlined in section 212(i) of the Act, as extreme hardship to a qualifying relative, in this instance the applicant's spouse, can no longer be established.

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.

¹ The only application which the applicant's spouse may request be withdrawn with respect to the instant record is the Form I-130, Petition for Alien Relative (Form I-130).