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U.S. Citizenship
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Services

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FILE:



Office: CLEVELAND, OH

Date: **MAY 12 2008**

IN RE:



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 District Director, Cleveland, Ohio 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), thus the relevant waiver application is moot.

The applicant is a native and citizen of Romania 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 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 District 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 District Director*, dated November 21, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred in finding the applicant inadmissible and in finding that the applicant 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, a statement from the applicant; country conditions reports; telephone, utility, cable, credit card, and homeowner's insurance bills; a storage unit rental agreement; a home loan; a nurse's aide certification for the applicant; a will; a psychological evaluation for the applicant's spouse; tax statements for the applicant's spouse; earnings statements for the applicant's spouse; a dental account history report; a bank statement; and an employment letter for the applicant's 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 August 4, 1993 the applicant was admitted to the United States as a B-2 visitor for pleasure. *Interoffice Memorandum, USCIS District Office, Cleveland, Ohio*, dated June 20, 2006; *Form I-213, Record of Deportable Alien*. Her visitor's visa was valid until February 4, 1994. *Form I-213, Record of Deportable Alien*. On August 26, 1993, the applicant filed a Form I-589, Request for Asylum in the United States. *Id.*; *See also Form I-589*. In October 1993, the applicant departed the United States. *Interoffice Memorandum, USCIS District Office, Cleveland, Ohio*, dated June 20, 2006. On March 3, 1994 the applicant did not appear for her scheduled asylum interview. *Form I-213, Record of Deportable Alien*. Her asylum case was referred to immigration court, and on January 27, 1995 the applicant was ordered deported in absentia. *Decision of the Immigration Judge, Executive Office for Immigration Review*, dated January 27, 1995. On February 20, 2004 the applicant married a United States citizen in Romania. *Marriage certificate*. On March 8, 2004, the applicant's spouse filed a Form I-130, Petition for Alien Relative on behalf of the applicant which was approved on October 13, 2004. *Form I-130*. On November 15, 2004 a Form I-129F, Petition for Alien Fiance(e) was approved for the applicant (*See Form I-129F*) and on February 6, 2005 the applicant was admitted to the United States as the K-3 spouse of a United States citizen. *Form I-94*. On March 28, 2005 the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. *Form I-485*. On January 30, 2006 the applicant appeared at the USCIS District Office in Cleveland, Ohio for an interview in connection with her Form I-485. *Form I-485; Interoffice Memorandum, USCIS District Office, Cleveland, Ohio*, dated June 20, 2006. During her adjustment of status interview, the applicant stated that she only came to the United States in 1993 for a visit. *Id.* She stated she did not remember filing the Form I-589, that she was unsure of the information included in the Form I-589, and that she did not know why this application had been filed, as she was never afraid of persecution in her home country. *Id.*; *Form I-485*. The applicant confirmed that the signature on the Form I-589 was her own and that the information contained in the application for asylum regarding the physical abuse and her fear of returning to Romania was false and untrue. *Interoffice Memorandum, USCIS District Office, Cleveland, Ohio*, dated June 20, 2006. The District Director found the applicant inadmissible under 212(a)(6)(C)(i) of the Act for attempting to obtain asylum by means of fraud and willful misrepresentation of a material fact. *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 first issue is whether the applicant committed a willful misrepresentation of a material fact in an attempt to obtain a benefit under the Act. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement. *9 FAM 40.63 N5*. According to the applicant, she was admitted to the United States as a nonimmigrant visitor on August 4, 1993 when she was 17 years old. *Statement from the applicant*, dated July 25, 2006. She came to the United States for a short visit and always intended to return back to Romania. *Id.* After her arrival in the United States, the applicant's aunt and uncle had the applicant sign a blank form in hopes of getting the applicant to stay in the United States for a longer period of time. *Id.* The applicant told her aunt and uncle of her plan to return to Romania, but they nevertheless had her fill out the form in hopes that she would change her mind. *Id.* She signed the form at the request of her aunt and uncle. *Id.* The applicant did not send the form or any other paperwork to the legacy Immigration and Naturalization Service (INS). *Id.* The AAO notes that the Form I-589 was signed by a preparer on August 19, 1993. *Form I-589*. On October 23, 1993 the applicant departed the United States and returned to Romania. *Id.* She departed the United States within the time allowed under her United States visa. *Id.* The AAO finds that the applicant's testimony during her adjustment of status interview, combined with her departure from the United States while her visitor's visa

remained valid, her subsequent compliance with U.S. immigration requirements, the documented preparation of the Form I-589 by a third party, and the applicant's youth at the time of filing are sufficient to demonstrate that her filing of the Form I-589 was not the result of willful misrepresentation in an attempt to obtain an immigration benefit.

Based on the record, the AAO finds that the applicant did not willfully misrepresent a material fact or commit fraud and she is not inadmissible under sections 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to sections 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) 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 moot.

ORDER: The appeal is dismissed as the underlying application is moot.