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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: OCT 30 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Dominican Republic 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.

The district 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 District Director*, dated July 9, 2001.

On appeal, the applicant states that her husband is a U.S. citizen, and that he will experience hardship if the present waiver application is denied. *Statement from Applicant on Form I-290B*, dated August 9, 2001.

The record contains, in pertinent part, a statement from the applicant on Form I-290B; an affidavit from the applicant; a copy of the applicant's marriage certificate; a copy of the applicant's passport, and; documentation in connection with the revocation of a Form I-130 relative petition filed on the applicant's behalf. 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 the applicant entered the United States using a Panamanian passport with a name other than her own. Thus, she misrepresented a material fact (her identity) in order to gain admission to the United States. Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

The applicant married her husband on February 2, 1994. Her husband filed a Form I-130 relative petition on her behalf on June 22, 1994. The petition was approved on November 8, 1994. Based on the approved Form I-130 petition, the applicant filed a Form I-485 application to adjust her status to permanent resident. Due to the fact that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, she also filed the present Form I-601 application for a waiver of her inadmissibility.

After investigation into the facts alleged by the applicant and her husband relating to their marriage, it was determined that the applicant entered into her marriage solely for the purpose of circumventing the immigration laws of the United States. Accordingly, the Form I-130 petition was revoked on September 25, 2004.

Upon review, the record reflects that there is no underlying basis for the present waiver application. As noted above, the Form I-130 petition on the applicant's behalf was revoked. The Form I-130 petition was the basis for the applicant's eligibility to adjust her status to permanent resident pursuant to her Form I-485 application. Without an approved Form I-130 petition, the applicant's Form I-485 application is moot. Once the Form I-485 application became moot, the applicant's present Form I-601 application for a waiver also became moot. For this reason, the applicant has not shown that she requires a waiver of inadmissibility, and the Form I-601 application may not be approved.[1]

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. *See* 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.

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[1] It is noted that, due to the fact that the applicant entered into a marriage for the purpose of evading the immigration laws of the United States, she is ineligible for approval of an employment-based or family-based immigrant petition on her behalf. Section 204(c) of the Act.