U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: AUG 07 2008

IN RE: [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 District Director, Newark, New Jersey, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Portugal who was found to be inadmissible to the United States pursuant to 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 admission to the United States by fraud or willful misrepresentation. The applicant is the mother of two lawful permanent resident daughters. The applicant's spouse is an applicant for lawful permanent residence. She 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 and daughters.

The district director concluded that the applicant had 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 April 23, 2002.

The record shows that, on July 12, 1992, the applicant procured admission to the United States by presenting a fraudulent Portuguese passport and U.S. nonimmigrant visa. On July 27, 1992, immigration officers detained the applicant as part of an investigation into a Portuguese smuggling ring. In exchange for the applicant's assistance in prosecuting leaders of this smuggling ring, the applicant was granted voluntary departure until February 11, 1993 and work authorization for this period of time. The applicant's voluntary departure and work authorization was extended until September 16, 1993. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. The record reflects that, on September 20, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved I-140 Petition for Alien Worker (Form I-140) filed on behalf of the applicant's spouse.

On July 31, 2001, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and that, in the alternative, her family would experience extreme hardship if she were denied the waiver and she should be granted a waiver due to her cooperation in an immigration investigation. *Brief In Support of Appeal*, dated April 27, 2002. In support of his contentions, counsel submitted the above-referenced brief and copies of documents previously submitted. The entire record was reviewed and considered in rendering a decision in this case.

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

> (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.

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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 October 14, 1967, the applicant married her husband, [redacted], who is a native and citizen of Portugal. Mr. [redacted] has resided in the United States since 1989. The applicant and her spouse have a 38-year old daughter and a 37-year old daughter who are both citizens of Portugal and lawful permanent residents of the United States. The applicant and her spouse have a 30-year old daughter who is a native and citizen of Portugal and is an applicant for permanent residence. The record reflects further that the applicant and Mr. [redacted] are in their 60's and that there is no indication that Mr. [redacted] or the applicant's daughters have any health concerns.

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admitted use of a fraudulent Portuguese passport and U.S. nonimmigrant visa to procure admission into the United States in 1992. Counsel contends that the district director's determination of inadmissibility is erroneous. Counsel asserts that the applicant was unaware that her husband had agreed to cooperate in an investigation of a Portuguese smuggling ring and had made arrangements with immigration officers to have the applicant travel to the United States using this smuggling ring in exchange for assistance in the family's pursuit of permanent residence in the United States. Counsel charges that, at the time of her entry, the applicant was in possession of her own personal passport which she had legally obtained from the Portuguese government and that a U.S. nonimmigrant visa was never obtained on her behalf by the smugglers. Counsel further asserts that, at the time the applicant arrived in the United States, the other immigrants in her group were immediately returned to their home country, she was ushered through inspections and was greeted by both her husband and the agent in charge of the investigation. However, apart from the applicant's affidavits, the record contains no evidence that the applicant or her husband were cooperating with immigration officers prior to the applicant's travel to the United States or that an agreement had been made between the applicant's husband and the immigration officers to assist with the family's pursuit of permanent residence. The Record of Deportable Alien (Form I-213) indicates that the applicant entered the United States by presenting a fraudulent Portuguese passport and U.S. nonimmigrant visa on July 12, 1992. The Form I-213 also indicates that the applicant was apprehended and questioned in regard to her entry on July 27, 1992, and that the applicant and her family agreed to cooperate with the investigation in exchange for which they were granted voluntary departure and work authorization until the conclusion of the investigation and prosecution. In the Sworn Statement, conducted in the Portuguese language with a certified translator and executed by the applicant on July 27, 1992, the applicant testified that, on July 12, 1992, she

obtained admission into the United States by presenting a passport that contained a U.S. visa. The applicant stated that the smuggler gave her the passport and that she was told to inform the immigration officers at the Port of Entry that she had had the U.S. visa for a period of five years. The applicant stated further that, after she was admitted to the United States, as directed by the smuggler, she returned the passport to another man who was waiting for her. The AAO notes that the only evidence presented by counsel is the applicant's affidavit and a photocopy of the immigration officer in charge of the investigation's business card. There is evidence in the record to indicate that the applicant agreed to cooperate with the immigration officer in charge of the investigation after she had been admitted to the United States by presenting fraudulent documents and apprehended by immigration officers. The record reflects that the applicant obtained admission to the United States by fraud and that the cooperation of the applicant in the investigation only resulted in work authorization and voluntary departure until the conclusion of the investigation and prosecution. The burden of proof lies with the applicant and at no time has counsel provided any evidence to suggest that the applicant's claims of innocence or supposed quid-pro-quo with immigration officers are bona fide. Moreover, at the time the applicant obtained admission to the United States by presenting a nonimmigrant visa she was an intending immigrant. The AAO agrees with the district director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for use of fraudulent documents to procure admission to the United States in 1992.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to an applicant's U.S. citizen or lawful permanent resident children cannot be considered in a section 212(i) waiver, except as it may affect a qualifying relative.

The record indicates that the applicant does not have a U.S. citizen or lawful permanent resident spouse or parents.

Counsel asserts that the applicant's lawful permanent resident daughters would suffer extreme hardship if the applicant is denied a waiver because she is such a great part of their lives and the lives of their children. While it is unfortunate that the applicant's daughters and their children may be separated from the applicant, as discussed above, hardship to an alien's children cannot be considered in this decision.

The AAO finds that the applicant has no qualifying family members that could suffer extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying family member as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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 is entirely on 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.