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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA Date: AUG 24 2009

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico, the wife of a U.S. lawful permanent resident (LPR), the mother of a U.S. LPR, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her husband and daughter.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative by denial of the Form I-601 Application for Waiver of Grounds of Inadmissibility, and denied the waiver application accordingly.

On appeal, counsel asserted that the applicant's misrepresentation was not material and that, in the alternative, the evidence demonstrates that, if the waiver application is not approved, the applicant's spouse will suffer extreme hardship. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record contains a sworn declaration by the applicant dated June 15, 2004. The applicant stated,

> I entered the United States for the first time [during] May 1994. I entered without inspection. I remained in the United States until November 1998. As I was leaving the U.S., I was interviewed at the border for a few minutes and allowed to leave. I entered again on 6/1999 and was inspected by [an] immigration officer. My daughter [redacted] **entered** with me. She was 6 years old. The officer took the fingerprint of one finger.
>
> In my life, I have entered the United States twice. On both occassions [sic] it has been without inspection.

Based on that account, the district director denied the waiver application, stating,

> You stated that you . . . entered the United States [during] June 1999. You stated that an immigration officer took the fingerprint of one of your fingers. You also stated that on both of your entries into the United States, you entered without inspection. This statement is obviously false because you admit that an immigration officer stopped you and took your fingerprint during your second entry.

The district director therefore found the applicant inadmissible pursuant to section 212(a)(6)(C) of the Act for having made a material misrepresentation in seeking admission to the United States.

The record contains an affidavit, dated February 15, 2005, from the applicant. In it, she stated that she attempted to enter the United States during June 1999 through the Phoenix point-of-entry with her daughter. She stated that she gave the names [redacted] and [redacted] for her

daughter and herself, though not necessarily respectively. She stated that she was detained for approximately half an hour, had one fingerprint taken, and was then returned to Mexico. She stated that she had no documentation in either of the two names she gave for herself and her daughter. She stated that later in the same day she entered the United States without inspection.

On appeal, counsel reiterated the history related by the applicant and argued that the facts do not show that the applicant is inadmissible. Counsel stated, ". . . at no point did [the applicant] indicate – either explicitly or ambiguously – that the officer admitted her after she was detained."

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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the Board of Immigration Appeals stated that a misrepresentation is material if the applicant is excludable based upon the true facts, or if the misrepresentation shut off a line of inquiry relevant to the alien's eligibility, which line of inquiry might well have resulted in a proper determination that the alien should be excluded.

This matter turns on whether the applicant's misrepresentations were made to obtain a visa, other documentation, or admission to the United States, and whether they were material to her eligibility for such a benefit. This office notes that the applicant's use of a false name had no impact on her eligibility to enter the United States during June of 1999.

The AAO disagrees with counsel's assertion that the applicant never ambiguously asserted that she was admitted to the United States pursuant to her misrepresentation of her name. The applicant stated, in her June 15, 2004 declaration,

> I entered [the United States during June 1999] and was inspected by [an] immigration officer." My daughter [redacted] entered with me. She was 6 years old. The officer took the fingerprint of one finger.

The applicant did imply, albeit apparently unintentionally, that she was admitted pursuant to that inspection, which was under an assumed name. In the following paragraph the applicant stated that her only two entries into the United States have been without inspection. The AAO notes that this was contradicted by the applicant's previous implication that she was admitted pursuant to an inspection. If the applicant had been admitted pursuant to a false name, then that misrepresentation would have been material.

But there is no evidence showing that the applicant presented the documentation necessary to be admitted in a legal status. The record contains no evidence that the applicant presented a visa or other entry document, and there is no indication that, had the inspecting officials been deceived by her false name, they would then have allowed her to enter the United States. The record contains no

evidence, other than the applicant's apparently unintentional implication on her June 15, 2004 declaration, that the applicant has ever entered the United States pursuant to an inspection. The applicant and counsel have explained the contradiction to the satisfaction of the AAO. Her name was not, therefore, a material fact within the meaning of section 212(a)(6)(C) of the Act.

Based on the record, the AAO finds that the applicant, in providing a false name, did not commit fraud or misrepresent a material fact for immigration purposes and is not inadmissible under section 212(a)(6)(C) of the Act.

However, the record suggests another issue that was not addressed in the decision of denial. The applicant, in her June 15, 2004 declaration, indicated that she entered the United States without being inspected during May of 1994, and remained in the United States pursuant to that entry without inspection until her departure during November 1998. She has also indicated that she again entered without inspection during June 1999.

Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

> (a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

> TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. Therefore, for the purpose of this inadmissibility provision, the applicant's first illegal presence began on April 1, 1997 and continued until November 1998, a period of more than one year. Because the applicant left and reentered after that unlawful presence of more than one year, she is inadmissible pursuant to section 212(a)(9)(C) of the Act.

Further, as is stated in section 212(a)(9)(C)(ii) of the Act, which is set out above, only limited exceptions are available for inadmissibility pursuant to section 212(a)(9)(C)(i) of the Act. One exception is for aliens whose entries into or departures from the United States were related to the alien's having been abused. The record contains no indication that this exception pertains to the instant applicant. The other exception is limited to aliens who have been outside of the United States for more than ten years, which similarly does not apply to the applicant.

In proceedings for application for waiver, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.