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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Thumma

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is 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) and the relevant waiver application is therefore moot. The matter will be returned to the director for further processing consistent with this decision.

The applicant is a native and citizen of Honduras who resides in Jamaica, New York and is the daughter and sister of legal permanent residents. The applicant is the beneficiary of an approved Form I-130 petition. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant 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 mother and brothers.

The 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 on October 18, 2006. On appeal, counsel asserted that the director had failed to consider the hardship the applicant's mother would suffer. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States without inspection and was apprehended on March 16, 1997. After being apprehended she gave a false name and represented herself to be from El Salvador rather than from Honduras. As a result of these misrepresentations, the director found the applicant inadmissible under section 212(a)(6)(C) of the Act.

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 (BIA 1960; AG 1961), the Board of Immigration Appeals defined the elements of a material misrepresentation, as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> 1. the alien is excludable on the true facts, or
> 2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

9 I&N Dec. at 448-449. Based on this standard, the applicant's misrepresentations were not material.

Although counsel did not raise the issue, 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 and her misrepresentation of her citizenship as Salvadoran rather than Honduran had no impact on her eligibility to enter the United States on March 16, 1997. The record contains no evidence that the applicant presented a visa or other entry document, and there is no indication that, had the Border Patrol been deceived by her false name and her false claim to Salvadoran citizenship, they would then have allowed her to remain in the United States. Her name and her Honduran, rather than Salvadoran, citizenship were therefore not material facts 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 and false country of citizenship when apprehended for entering the United States without inspection, 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. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

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 is not inadmissible and is therefore not required to file the application. Accordingly, the appeal will be dismissed as moot.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The director shall continue to process the Form I-485 application.