

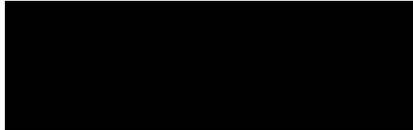
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



HL2

FILE: [REDACTED] Office: BALTIMORE Date: SEP 02 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot. The matter will be returned to the district director for continued processing.

The record reflects that the applicant is a native and citizen of Bolivia 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 fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a naturalized 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 with her husband 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. *See Decision of the District Director*, dated July 16, 2007.

Section 212(a)(6)(C)(i) of the Act provides:

In general. — 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.

The record shows that the applicant entered the United States on July 19, 2000, using a visitor's visa. The applicant overstayed her visa and the district director found that USCIS records indicate that the applicant has not departed the United States since her arrival. Nonetheless, the district director found, and counsel does not contest, that the applicant's passport was presented at the U.S. embassy in Bolivia with an altered entry stamp. According to an unsigned note in the record, the applicant's passport was presented by an unnamed male, referred to in the note as the applicant's "husband," on May 23, 2001. At that time, the applicant was married to [REDACTED], whom she divorced in 2004. Whoever the man was, he was in possession of the applicant's passport, and he was attempting to obtain visitor's visas for the applicant's two daughters, then aged 11 and 15. The note was apparently written by an embassy employee, who indicated that the re-entry stamp in the applicant's passport originally showed that the applicant returned to Bolivia on August 23, 2001; and that the stamp was altered to show that the applicant returned to Bolivia on August 23, 2000. In fact, the applicant never returned to Bolivia, and she's still here in the United States. The applicant apparently allowed someone to use her passport in connection with applying for visas for her two daughters. Whoever it was, it was not the applicant, because she was in the United States, and she never presented the passport to a United States Government official. There is no evidence in the record showing where the false Bolivian entry stamp in the applicant's passport was obtained, or who obtained it.

Counsel contends the applicant "never had the chance to explain that not only were those stamps [ir]relevant as they never were used for any purpose, lawful or unlawful, but she had no knowledge of those stamps or why they were in the passport." Counsel explains that "a friend . . . suggested that if she sent her passport back to Bolivia, then her kids would be able to show the U.S. Embassy where she was and they would give them visas to visit. It was this friend who apparently took the passport and got them stamped. But never, EVER, with the knowledge of the applicant. She never knew this was done." Counsel further contends that the record is clear that the applicant was not the person who obtained the stamps and was not the person who presented the visa to the embassy since the applicant never left the United States. *Notice of Appeal or Motion (Form I-290B)*.

After a complete review of the record, the AAO concludes that the record contains no evidence that the applicant committed fraud or willfully misrepresented a material fact in order to procure an immigration benefit. Although the applicant's passport contains a fraudulent Bolivian entry stamp, the district director clearly found that "the records of the Service reflect that [the applicant has] not departed the United States since [her] arrival on July 19, 2000." *Decision of the District Director, supra*. Therefore, the record indicates that the applicant herself probably did not obtain the stamp and clearly she did not present her passport to U.S. embassy officials in Bolivia. There is no evidence in the record that the applicant conspired with another person to obtain the false Bolivian entry stamp and then use it to mislead an embassy official. "It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found." *See Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994) (finding the applicant not inadmissible because "[t]he record contains no evidence that *the applicant* practiced fraud or made a willful misrepresentation to a United States Government official") (emphasis added). Although counsel attempts to provide an explanation for the fraudulent stamp, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nonetheless, the record shows that the applicant herself did not commit fraud or willfully misrepresent a material fact to an authorized official in order to obtain a visa for her children to visit her in the United States. In addition, the AAO notes that the district director did not find, and the record does not show, that the applicant engaged in fraud or willful misrepresentation when she entered the United States in July 2000.

Accordingly, the AAO finds that the applicant did not commit fraud or misrepresent a material fact to obtain an immigration benefit and is not inadmissible under section 212(a)(6)(C)(i) of the Act. Because it has not been established that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, whether the district director correctly assessed hardship to the applicant's spouse under section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.