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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: [redacted] Office: ROME Date: MAR 24 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The record indicates that the applicant, a native and citizen of Pakistan, attempted to procure entry to the United States in September 2000 by presenting a fraudulent passport and nonimmigrant visa. Furthermore, when the applicant was interviewed at the port of entry on September 14, 2000, she made a series of statements which, when compared with the statements made by her and her petitioning parent in the Form I-601, Application for Waiver of Grounds of Inadmissibility, were clearly false. The applicant was thus 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 having attempted to procure entry to the United States by fraud and/or willful misrepresentation.[1] The applicant sought 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 U.S. citizen father and lawful permanent resident mother.

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 Ground of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated July 17, 2008.

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.

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 immigrant 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....

On August 22, 2008, the AAO received a letter from counsel, advising that the applicant's father, the petitioner of the Form I-130, Petition for Alien Relative (Form I-130), filed in December 2000 and approved in July 2001, had died. *See Letter from Mervyn Mosbacker, Esq., George R. Willy PC,* dated August 22, 2008. A copy of the Facts of Death Verification for the deceased was provided.

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[1] The applicant does not contest the district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

Section 205.1 of Title 8 of the Code of Federal Regulations states, in pertinent part:

> (a) Reasons for automatic revocation. The approval of a petition...made under section 204 of the Act...is revoked as of the date of approval:
>
> (3) If any of the following circumstances occur...before the decision on his or her adjustment application becomes final:
>
> (i) Immediate relative and family-sponsored petitions, other than Amerasian petitions. (C) Upon the death of the petitioner....

The Form I-130 petition submitted by the applicant's father has been automatically revoked due to his death. The viability of the Form I-601 is dependent on an immigrant visa application that is, in turn, based on an approved Form I-130, Petition for Alien Relative. In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601 is moot.[2] The appeal of the denial of the waiver must therefore be dismissed as moot.

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[2] The AAO notes that the new section 204(l) of the Act, which became effective on October 28, 2009, does not provide relief for the applicant. Section 204(l) states, in pertinent part:

> l) Surviving Relative Consideration for Certain Petitions and Applications-
>
> (1) IN GENERAL- An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.
>
> (2) ALIEN DESCRIBED- An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was--
>
> (A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i));
>
> (B) the beneficiary of a pending or approved petition for classification under section 203 (a) or (d);
>
> (C) a derivative beneficiary of a pending or approved petition for classification under section 203(b) (as described in section 203(d));
>
> (D) the beneficiary of a pending or approved refugee/asylee relative petition under section 207 or 208;

ORDER: The appeal is dismissed.

(E) an alien admitted in 'T' nonimmigrant status as described in section 101(a)(15)(T)(ii) or in 'U' nonimmigrant status as described in section 01(a)(15)(U)(ii); or

(F) an asylee (as described in section 208(b)(3)).

The applicant does not qualify for relief under section 204(l) of the Act, as she was not residing in the United States when her father died, nor does she reside in the United States at this time, and consequently, the applicant cannot be granted a waiver and immigrant visa approval based on the Form I-130 petitioned by her now deceased father.