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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

[redacted]

Date: AUG 10 2012 Office: LOS ANGELES, CA FILE: [redacted]

IN RE: Applicant: [redacted]

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action.

The record reflects that the applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that there was no evidence in the record to support a finding that the applicant's spouse would experience extreme hardship and denied the application accordingly. *Decision of the Field Office Director*, dated July 27, 2010.

On appeal, counsel contends the applicant is not inadmissible because she has not misrepresented a material fact in order to procure an immigration benefit. In addition, counsel contends the applicant's visa has never been revoked.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [redacted] indicating they were married on February 8, 2004; an affidavit from the applicant; letters from Mr. [redacted] employer; copies of bank account statements, tax records, and other financial documents; and an approved Petition for Alien Relative (Form I-130) filed by the applicant's sister. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> 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.

In this case, the field office director found that the applicant:

> entered the United States at Los Angeles, California on January 16, 2003 using a B-2 visitor visa issued in your name. The Department of State subsequently revoked your visa due to fraud.
>
> The record also reflects that on August 17, 2005, [redacted] filed an I-130, Petition for Alien Relative, on your behalf based on your marriage to a United States citizen. An Application to Register Permanent Residence or Adjust Status, form I-485, was subsequently filed on the same date.

> Based on your previous fraudulent application, you are hereby found inadmissible. . . .

On appeal, counsel contends that the Service has not provided any evidence that the applicant committed fraud or made any misrepresentation to obtain her visa. According to counsel, the applicant applied for a visa at the U.S. embassy in Sir Lanka, paid the prescribed fee, presented her valid Vietnamese passport, and was issued a visitor's visa. Counsel contends that the fact that the applicant applied for a visitor's visa in Sri Lanka instead of Vietnam does not prove that she committed fraud. Counsel states that the applicant had no means of knowing whether the visa that was issued in her name was improper. Furthermore, counsel states that the applicant's non-immigrant visa was not cancelled in writing and has not been stamped with the word "Revoked" across the face of the visa.

The applicant submits an affidavit stating that she does not understand why she was accused of obtaining a visa through fraudulent means. The applicant states she applied for a visa at a U.S. consulate, her application was approved, and her visa was subsequently issued in her name. She contends she did not lie or make any misrepresentation to get her visa.

The record contains notes from the applicant's adjustment interview which indicate that the applicant's father's friend advised her that she should apply for a visa in Sri Lanka. According to these notes, the applicant was twenty years old at the time, traveled to Sri Lanka for one week, and stayed with a friend. The interview notes state that the applicant gave extremely vague and intangible responses regarding why she applied for her visa in Sir Lanka instead of Vietnam. The notes also state that the applicant gave very sketchy answers and inconclusive statements regarding whether and where she worked when she purportedly met her friend who lives in Sri Lanka. The notes further indicate that there was a fraud ring involving consular officers in Sri Lanka who sold visas to Vietnamese applicants. According to the notes, the applicant obtained her B1/B2 visa from corrupt officers at the U.S. embassy in Sri Lanka. Other notes in the record indicate that the investigation into the fraud ring did not address whether or not this particular applicant paid a bribe to the corrupt consular officers.

After a careful review of the record, the AAO finds that there is insufficient documentation in the record to substantiate the applicant's inadmissibility. The record does not show whether the applicant knowingly, willfully, or intentionally made any misrepresentation. In addition, there is no evidence that any misrepresentation was a material misrepresentation. The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as "(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 have resulted in a proper determination that he be excluded." 9 I&N Dec. 436, 447 (BIA 1960). The record shows the applicant obtained a visa in her own name and that the investigation did not show whether the applicant paid a bribe to obtain her visa. There is no evidence the applicant was excludable on the true facts or that any misrepresentation she may have made shut off a line of inquiry which might have resulted in her being excluded. A misrepresentation is generally material only if by it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988). Without any

specifics regarding the applicant's alleged misrepresentation of a material fact, the AAO finds that there is insufficient evidence in the record to support a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. The AAO acknowledges that the applicant obtained her visa with the assistance of a consular employee who was later convicted of involvement in a wide spread scheme to issue visas outside of normal channels. However, there is nothing in the record to indicate what, if any, fraudulent documents were submitted to obtain the visa nor any evidence that the applicant would have been ineligible for the visa had she gone through normal processing.

Therefore, the AAO remands the matter to the field office director to evaluate whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. If it is determined that the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, the field office director shall issue a new decision addressing whether the applicant made a willful or intentional misrepresentation and if so, whether the misrepresentation was of a material fact. The decision shall contain evidence to support that finding. If the new decision is adverse to the applicant it is to be certified to the AAO for review and the applicant shall be given thirty days in which to respond to the new decision.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.