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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: JUN 14 2012 OFFICE: ST. CROIX FILE: [redacted]

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:

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, St. Croix, Virgin Islands and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The record reflects that the applicant is a native and citizen of Grenada who entered the United States with a nonimmigrant visa on August 23, 2008, with authorization to remain in the United States until September 20, 2008. The applicant remained in the United States beyond that date and submitted a Form I-485, Application to Register Permanent Residence or Adjust Status that was signed by the applicant on September 30, 2008 and submitted on October 7, 2008. The Field Office Director found the applicant 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 procured entry to the United States by fraud or willful misrepresentation when she presented herself as a bona fide visitor for pleasure upon her entry to the United States. The applicant seeks a waiver of inadmissibility based upon her qualifying relative, her stepparent.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated May 12, 2009.

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...

The record reflects that the applicant entered the United States with a B2 non-immigrant visa on August 23, 2008. The applicant's mother states that the officer at admission had been reluctant to admit the applicant's mother and the applicant to the United States after learning that the applicant had been attending school in the United States prior to their August 23, 2008 entry. However, the applicant's mother assured the officer that she and the applicant would depart by the authorized period, until September 20, 2008. The applicant remained in the United States beyond the

authorized period, the applicant's mother married a U.S. citizen on September 17, 2008, and the applicant filed an application for adjustment of status on October 7, 2008.

The Department of State Foreign Affairs Manual states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants ... [a]pply for adjustment of status to permanent residence." *DOS Foreign Affairs Manual,* § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ... [m]arrying and taking up permanent residence." *Id.* at § 40.63 N4.7-1(3). Under this rule, "[i]f an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.." *Id.* at § 40.63 N4.7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. The applicant's mother married a U.S. citizen within thirty days of her and the applicant's entry to the United States. Accordingly, the applicant's mother is presumed to have misrepresented her intention in seeking a B2 non-immigrant visa and she is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

However, there is no indication that the application, who was travelling with her mother and fifteen years old at the time of her mother's misrepresentation, knew that it was mother's intention to remain in the United States and marry a U.S. citizen within thirty days of her entry to the United States. In addition, there is no indication that the applicant spoke to the officer at admission or that she, as a minor travelling with her mother, could have left the United States in compliance with her nonimmigrant visa. Accordingly, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's waiver application is thus unnecessary and the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary.