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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 12 2013 OFFICE: CHICAGO, IL FILE:

IN RE: APPLICANT:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of Mexico who was 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 sought to procure a visa, other documentation, or admission to the United States, or a benefit under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 14, 2011.

On appeal, counsel contends the applicant did not commit fraud or make a material misrepresentation for a visa, documentation, admission, or another benefit under the Act. Counsel asserts if the applicant remains inadmissible under 212(a)(6)(C) of the Act, the record establishes that the applicant's spouse would experience extreme hardship given the applicant's inadmissibility.

The record includes, but is not limited to, statements from the applicant and his spouse, other applications and petitions, evidence of birth, marriage, residence, and citizenship, documentation of country conditions in Mexico, financial and medical documents, letters from employers, and documentation of criminal proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

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 [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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 applicant admits in a June 1, 2011 sworn statement that he first entered the United States without inspection in 1989. On September 18, 1990 the applicant encountered immigration officials while he was being held at a detention center. The record reflects that the applicant falsely told those immigration officials his name was "[redacted]" and that he was born on December 8, 1973. The applicant also reported that he entered the United States without inspection on June 5, 1990, and that he had been voluntarily returned to Mexico twice. The record reflects that the applicant was allowed to voluntarily return to Mexico. The applicant adds in his sworn statement that he entered the United States without inspection again a month after his voluntary return.

During this encounter, the applicant did not seek admission into the United States, as he was already present in the country. The applicant also did not attempt to obtain a visa or any documentation from immigration officials. Furthermore, if the applicant sought to procure voluntary departure, he would be seeking a benefit under the Act, but contrary to the Field Office Director's finding, voluntary return is not a benefit found in the Act. *See section 240B, Immigration and Nationality Act.* The AAO therefore finds that in the present case, by giving immigration officials a false name and date of birth after he had entered the United States without inspection, the applicant did not seek to procure a visa, other documentation, admission into the United States, or another benefit provided under the Act.[1] He is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act.

As such, the waiver application under section 212(i) of the Act is unnecessary. Evaluation of whether the applicant established extreme hardship to a qualifying relative is therefore moot and will not be addressed.

ORDER: The appeal is dismissed, the Field Office Director's decision is withdrawn, and the waiver application under section 212(i) of the Act is declared unnecessary.

[1] As the applicant did not seek to procure a visa, other documentation, admission into the United States, or a benefit under the Act, the AAO finds no purpose in addressing counsel's assertion that the misrepresentation was not material.