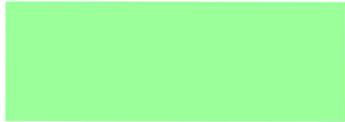




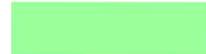
U.S. Citizenship
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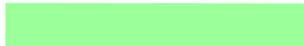


Date: JUL 29 2014 Office: VERMONT SERVICE CENTER

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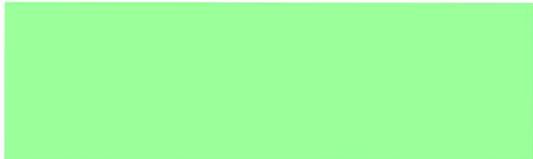


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 244(c)(2)(A)(ii) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(c)(2)(A)(ii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Syria, applying for temporary protected status (TPS) under section 244 of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1254. The applicant 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 having attempted to enter the United States based on fraud or misrepresentation.

In a decision, dated October 10, 2013, the director found that the applicant had attempted to obtain an immigrant visa based on a fraudulent marriage and that she had not established a favorable exercise of discretion was warranted in her case for humanitarian purposes, to assure family unity, or because it is in the public interest.

On appeal, counsel states that the director abused her discretion in denying the applicant's waiver application because her case should clearly be granted for humanitarian purposes, to assure family unity, and because it is in the public interest. Counsel states that the applicant admitted to the fraudulent marriage on her own, before the consular officer began asking her questions and that the applicant could not have admitted to the fraudulent marriage before her consular interview in 1999. Counsel also states that the applicant is married to a lawful permanent resident, has four U.S. citizen children who are minors, has no criminal record, and would face great danger if she returned to Syria.

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.

The record indicates that on December 12, 1996, the applicant divorced her first husband, a lawful permanent resident. On May 18, 1998, the applicant married brother, a U.S. citizen. On July 7, 1998, a Petition for Alien Relative (Form I-130) based on the applicant's marriage to was filed. On March 24, 1999, the applicant was first interviewed for an immigrant visa based on the approval of her Form I-130. On September 19, 1999, the applicant appeared for a second interview and to submit additional documentation. On September 20, 1999, the applicant came to the Embassy and asked to speak with a consular officer about her case. At this time, she gave a sworn statement that she entered into a marriage with her first husband's brother so that she could obtain a visa more quickly and enter the United States. On May 11, 2000, in order to bring the applicant's case to a resolution, a consular officer again interviewed the applicant. At this interview the applicant stated that she wanted to retract her previous sworn statement because she had found out that her first husband was married to another woman in the United States and had a child. She stated that after learning this about her first husband, her family convinced her to try and

continue her marriage with [REDACTED]. In June 2001, the applicant entered the United States without inspection and in March 2002 she had her first child with [REDACTED]. On March 22, 2005, the Form I-130 connected to the applicant's marriage to [REDACTED] was revoked. The applicant states she is currently married to [REDACTED] and has four U.S. citizen children with him. Furthermore, on April 25, 2012, the applicant filed an Application for Temporary Protected Status and did not state that her spouse, [REDACTED] had any prior marriages nor did they disclose their divorce on December 12, 1996, instead stating that they have been married since September 1994.

The Department of State Foreign Affairs Manual (FAM) offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act. 9 FAM 40.63 n.4.6 states:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) and INA 212(a)(6)(C)(ii) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview...

In the applicant's case, she failed to retract her misrepresentations regarding her fraudulent marriage at her first interview, which occurred on March 24, 1999. Thus, the applicant did not make a timely retraction of her misrepresentation and the current record indicates that she is inadmissible under section 212(a)(6)(C) of the Act.

Section 244(c)(2) of the Act provides, in pertinent part:

(A) Waiver of certain grounds of inadmissibility.—

...

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. § 1254(c)(2).

In support of her waiver, the applicant submitted: copies of her children's birth certificates, medical documentation, and a statement from the applicant's spouse.

The record reflects that the applicant has not resided in Syria since 2001 and that her mother and father, who were living in Syria at the time of her departure have died. The record also establishes that the applicant has significant family ties to the United States, including four U.S. citizen children, ages 11, 8, 6, and 4 years old. The applicant's spouse states that he owns a small business and relies

on the applicant to help care for their children. Thus, given the applicant's significant family ties to the United States she qualifies for a waiver to assure family unity.

The grant or denial of the above waiver does not turn only on whether the applicant has established that the waiver is needed to assure family unity. It also depends on a determination that the applicant merits a favorable exercise of discretion by the Secretary of Homeland Security.

The favorable factors in this matter include: the volatile and unpredictable civil war currently happening throughout Syria and the dangerous situation the applicant would face if she returned to Syria, the applicant's family ties to four U.S. citizen children and a lawful permanent resident spouse, and the lack of any criminal record. The unfavorable factors in this matter are the applicant's misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States and the applicant's entry to the United States without inspection. The AAO finds that the concerns surrounding family unity outweigh the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 244(c)(2)(A), the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.