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FILE: 

Office: CLEVELAND, OHIO

Date: MAY 19 2005

IN RE: 

PETITION: 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 PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native of Palestine 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). The applicant was admitted to the United States on October 15, 1997 as an F-1 student but never attended school. The applicant married [REDACTED] (Ms. [REDACTED] a United States citizen, on February 16, 2000. Ms. [REDACTED] filed a Petition for Alien Relative (I-130) with the applicant as beneficiary. 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 wife.

The director concluded that the applicant misrepresented himself as a student to gain entry into the United States. The director further concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, Cleveland, Ohio, dated October 2, 2003.*

On appeal, counsel contends that the applicant did not misrepresent himself to gain admission to the United State, but that even if the applicant did commit misrepresentation, he is entitled to a waiver of inadmissibility because Ms. [REDACTED] will suffer extreme hardship if the applicant is refused admission to the United States. In support of the appeal, counsel submitted a brief; affidavits from the applicant, Ms. [REDACTED] and the applicant's father; a letter from [REDACTED] National Bank; letters from [REDACTED] State University; a letter from [REDACTED] Warren Community Federal Credit Union; an April 17, 2003 United States Department of State Travel Warning for Israel, the West Bank and [REDACTED] a March 31, 2003 United States Department of State Country Report for Israel and the Occupied Territories; a July 7, 2003 letter from Forum Health Trumbull Memorial Hospital regarding Ms. [REDACTED] emergency room visit; letters from Ms. [REDACTED] parents; and letters from Ms. [REDACTED] siblings. The entire record was considered in rendering this decision.

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

- (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 that:

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 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 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.

Counsel contends that the applicant intended to attend college in the United States; therefore he did not misrepresent himself at the time of his application for a student visa or at the time of his entry into the United

States. Counsel maintains that after the applicant arrived in the United States, his circumstances changed and he was unable to afford the cost of attending Ohio Dominican College, a private school, but that he made efforts to attend Kent State University, a public school.

The evidence in the record does not establish that the applicant willfully misrepresented a material fact to procure a visa and gain admission to the United States. Presumably, when the applicant applied for his student visa, he provided proof of financial means to the American consular officer who processed the application. The applicant's decision not to attend Ohio Dominican College appears to have occurred after he arrived in the United States. First, the applicant came to the United States expecting financial assistance from his father. In his affidavit, the applicant's father indicated that he suffered serious financial setbacks beginning in October 1997. The applicant's father could no longer assist the applicant. Second, the applicant received the results of his Test of English as a Foreign Language (TOEFL) after arriving in the United States. The applicant's score did not meet Ohio Dominican College's entrance requirements.

When the applicant realized that he could not attend Ohio Dominican College, he attempted to gain entrance to Kent State University. The record contains letters from ██████ State University, one of which is dated July 30, 1998 and indicated that the applicant was "provisionally" admitted to the Trumbull Campus for the Fall Semester, 1998. Another Kent State University letter is dated February 24, 1999 and instructs the applicant to submit additional information, including proof of financial means. The record also contains a notice dated April 23, 1999 from Greater Warren Community Federal Credit Union informing the applicant that his loan application was refused for lack of credit references. The applicant's efforts to attend Kent State University and to obtain a loan indicated intent to attend school.

Accordingly, the AAO finds that the applicant is not inadmissible for willfully misrepresenting a material fact to procure a visa and gain admission to the United States. Because the applicant is not inadmissible, he does not require a waiver. Counsel's appeal of the director's denial of the applicant's waiver is therefore moot. The director's decision is withdrawn, and the appeal will be dismissed.

ORDER: The appeal is dismissed.