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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES (SANTA ANA), CA

Date: APR 13 2006

IN RE:



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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles (Santa Ana), California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and the relevant waiver application is therefore moot.

The applicant is a native and a citizen of Poland who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring an employment authorization card by fraudulent means. *See Form I-72*, dated June 9, 2004. The applicant is the spouse of a U.S. Citizen who asserts that she is not inadmissible and in the alternative, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 8, 2004.

On appeal, counsel asserts that the applicant did not commit fraud or willful misrepresentation, the district director should be estopped from finding her inadmissible and adverse factors were not properly weighed which resulted in an abuse of discretion. *Brief in Support of Appeal*, at 3, 6-7, dated November 4, 2004.

In support of these assertions, counsel submits statements from the applicant and information on Poland. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant received the assistance of an immigration consultant in obtaining an employment authorization document. *Applicant's Statement*, at 2, dated August 2004. The consultant told the applicant that she would file her case directly with an INS [now CIS] adjudication officer. *Id.* The applicant states that the consultant would not give her direct answers on the details of the process, that she was assured by the consultant that the employment authorization document would come from the INS [now CIS] and that the consultant told her that the INS [now CIS] would not issue employment authorization documents unless one was legally eligible. *Id.*

The immigration consultant subsequently plead guilty to procuring work permits through fraud and the CIS official who she worked with plead guilty to bribery and issuing fraudulent work permits. *Department of Justice Press Release*, at 1-2, dated May 10, 2004.

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.

The Department of State Foreign Affairs Manual (FAM) offers interpretation regarding the statutory reference to misrepresentations under section 212(a)(6)(C)(i) of the Act. Title 9, FAM § 40.63 N4.5 provides, in pertinent part, that:

The fact that an alien pursues a visa application through an attorney or travel agent does not serve to insulate the alien from liability for misrepresentations made by such agents, if it is established that the alien was aware of the action being taken in furtherance of the application.

The record establishes that the consultant and CIS official were engaged in misrepresentation and fraud, however, there is no evidence that the applicant was aware of their actions. The applicant states that she had no idea that the work permit was not valid or procured by fraudulent means. *Applicant's Statement*, at 3. The applicant presented the work permit in her adjustment of status case and listed the alien number from her work permit on her immigration forms. *Id.* This is further evidence that she was unaware of the fraudulent nature of her document and that she did not engage in fraud or willful misrepresentation of a material fact.

Based on the record, the AAO finds that there is no evidence that the applicant committed fraud or willfully misrepresented a material fact and she is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to section 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.