

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

Office: CHICAGO, IL

Date: JUL 19 2006

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL. The applicant submitted an appeal of the director's decision to the Administrative Appeals Office (AAO) and the AAO dismissed the appeal. The application is now before the AAO on a motion to reconsider. The motion is granted and the previous decision of the AAO will be affirmed.

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 attempted to procure admission into the United States by falsely claiming to be a U.S. citizen on April 2, 1990. The applicant is married to a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to demonstrate extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated January 14, 2003.

On appeal, counsel states that the applicant did not make any misrepresentations and the applicant's spouse will suffer great actual injury if the applicant is removed. *Counsel's Brief*, dated March 7, 2003.

The AAO dismissed the applicant's appeal because he failed to show that her U.S. spouse would suffer extreme hardship as a result of her removal. *AAO Decision*, dated December 3, 2003.

Counsel's motion to reconsider states that because of amendments to the Act the applicant is not inadmissible under section 212(a)(6)(c)(ii) unless her misrepresentations occurred after September 30, 1996. *Counsel's Motion to Reconsider*, dated December 31, 2003.

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:

- (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 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.

The record reflects that on April 2, 1990, the applicant attempted to enter the United States at the San Ysidro, CA port of entry by making an oral representation to an immigration officer that she was a U.S. citizen. The applicant was subsequently arrested and processed under the false name of [REDACTED] born on February 2, 1966.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. Therefore, the AAO and director's decisions were correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and adjudicating the waiver application under section 212(i) of the Act.

Furthermore, counsel is incorrect in his analysis of the amendments to the Act and their effects on the applicant's inadmissibility. The amendments to the Act do not amend the law so that an applicant who claimed false U.S. citizenship prior to September 30, 1996 is admissible. Because the applicant's misrepresentations were made prior to September 30, 1996 she is not inadmissible under section 212(a)(6)(C)(ii) of the Act, where no waiver is available. The applicant is inadmissible under section 212(a)(6)(C)(i) and is eligible to apply for a waiver. For the applicant's inadmissibility to be waived she must establish that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. As the motion to reconsider does not address the findings of extreme hardship, the AAO will not reconsider the AAO's prior decision regarding the hardships suffered by the applicant's spouse.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 has not met that burden. Accordingly, the prior decision of the AAO is affirmed.

ORDER: The motion is granted and the prior decision of the AAO is affirmed.