



U.S. Citizenship
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FILE:

Office: LIMA PERU

Date: JUN 06 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Lima, Peru and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the acting officer in charge will be withdrawn and the application declared moot.

The applicant is a native and citizen of Chile who was found to be inadmissible to the United States (U.S.) 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 presented a counterfeit Alien Registration Card to an employer. The applicant married a U.S. citizen on October 11, 2002. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting officer in charge concluded that the applicant did not establish that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. The acting officer in charge then denied the applicant's waiver application (Form I-601) and her application for permission to reapply for admission (Form I-212). *Decision of the Acting Officer in Charge*, dated October 16, 2004.

On appeal, counsel states that the applicant did establish that her spouse would suffer extreme hardship as a result of her inadmissibility and he asks for the applicant's section 212(i) waiver to be granted. *Counsel's Brief*, dated February 7, 2005.

The AAO notes that on appeal, counsel does not make any assertions regarding the denial of the applicant's Form I-212. Therefore, this decision will only discuss the denial of the applicant's Form I-601.

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 indicates that on May 19, 2000 the applicant entered the United States on a valid F1 student visa, expiring on December 31, 2001. The applicant finished her studies in November 2000, but remained in the United States until June 16, 2001 when she departed for Mexico, reentering the same day on her valid B1 tourist visa. The applicant departed the United States on December 12, 2001, before her authorized stay expired on December 15, 2001. During the time period after the applicant reentered the United States in June 2001 but before she departed the United States in December 2001, she purchased a counterfeit Alien

Registration Card and used this card to obtain employment. On March 1, 2002 she attempted to enter the United States again on her valid visitor's visa but was sent to secondary inspection. While in secondary inspection an Immigration Officer found the applicant's counterfeit Alien Registration Card. She admitted to purchasing this card and using it to obtain employment in San Diego, CA. The applicant was then removed to Chile.

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. Stated in part; (1) a misrepresentation can be made orally or in writing, (2) silence or the failure to volunteer information does not in itself constitute a misrepresentation, (3) *the misrepresentation must have been practiced on an official of the U.S. government, generally a consular or immigration officer*, (4) a timely retraction will avoid the penalty of the statute. Whether a retraction is timely depends on the circumstances of the particular case. Consular of Bureau officers "shall" warn the alien being interviewed of the statutory penalty. (*Emphasis Added*).

The AAO finds that the record does not establish that the applicant presented the counterfeit Alien Registration Card to any U.S. government official. The decision of the acting officer in charge states, " On March 1, 2002, she was interviewed by an Immigration Officer in Dallas, TX. That interview revealed that the applicant admitted to having purchased a counterfeit Alien Registration Card in San Diego, CA with which she obtained employment as a pharmacy assistant at the University of California San Diego Hospital..." The applicant never presented the counterfeit Alien Registration Card to a U.S. government official to procure an immigration benefit nor did she misrepresent herself to a U.S. government official in obtaining the card. Therefore, the applicant did not violate section 212(a)(6)(C)(i) of the Act and does not require a waiver of inadmissibility. The appeal will be dismissed, the decision of the acting officer in charge will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the acting officer in charge is withdrawn and the application for waiver of inadmissibility is declared moot.