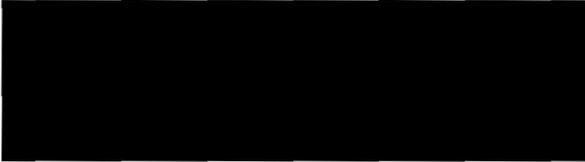




U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: KANSAS CITY (ST. LOUIS) Date: JUN 08 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:

SELF-REPRESENTED

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, Kansas City, MO. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Taiwan 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 procured admission into the United States by fraud or willful misrepresentation on June 14, 2002. The applicant married a lawful permanent resident on August 15, 2002. 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 did not establish that her spouse would suffer extreme hardship in relocating to a new country. The application was denied accordingly. *Decision of the District Director*, dated July 8, 2004.

On appeal, the applicant's former counsel submits new evidence and states that the applicant has established that her spouse would suffer extreme hardship as a result of relocating to another country. In addition, counsel challenges the assertion that the applicant had immigrant intent upon entering the United States. *Counsel's Brief*, dated September 24, 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.

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 Department of State Foreign Affairs Manual states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident..." *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her

visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence.” *Id.* at § 40.63 N4.7-1(3).

Under this rule, “when violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility.” *Id.* at § 40.63 N4.7-4.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its’ analysis in these situations to be persuasive. In the case at hand, the applicant married and applied for permanent residence after entering on a B-2 visa. The marriage and application for permanent residence is violative conduct under the 30/60 day rule. However, the marriage took place on August 15, 2002 and the application for permanent residence took place on September 6, 2002. Both of these events occurred more than 60 days after the applicant’s entrance on June 14, 2002. Furthermore, although the record reflects contact between the applicant and her husband before her entrance, there is not sufficient evidence to establish that this contact was to circumvent the immigrant visa process.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore, the Form I-601 is moot. Having found that the applicant is not in need of a waiver, no purpose would be served in discussing whether her husband has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.