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

PUBLIC COPY

H2



FILE:



Office: SAN ANTONIO, TEXAS

Date: JAN 26 2007

IN RE:

Applicant:



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 District Director for Services, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting that she had a child in Mexico, in order to gain the benefit of a travel document. The record indicates that the applicant is married to a lawful permanent resident spouse and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident husband and two United States citizen children.

The district director concluded that the applicant failed to comply with a request for evidence establishing that she met all the legal requirements for granting the Application for Waiver of Grounds of Excludability (Form I-601) and that a favorable exercise of discretion was warranted in her case. *District Director's Decision*, dated February 4, 2005. The application was therefore considered abandoned and was denied. *Id.*

On appeal, the applicant, through counsel, claims that he never received a request for evidence. Counsel asserts that even though the applicant misrepresented that she had a child in Mexico, she later admitted this misrepresentation to Citizenship and Immigration Services (CIS). *Brief attached to Form I-290B*, filed April 7, 2005.

Counsel provided a letter from the applicant's previous attorney, [REDACTED] dated August 12, 2000, in which he states the applicant gave CIS false information "to secure a travel document" because she wanted "to visit her elderly grandmother in Mexico." *See letter from [REDACTED] dated August 12, 2000.* However, the letter additionally states "[m]y client has no children in Mexico or the United States. She is single." *Id.* The AAO notes that counsel provides the applicant's Certificate of Marriage, dated September 10, 1990, and two birth certificates for the applicant's children, dated March 1, 1990 and February 9, 1995. Clearly, the statement made on August 12, 2000, that the applicant had no children in the United States and she was single, was inaccurate. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Volume 8 of the Code of Federal Regulations (8 C.F.R.) § 103.2(b)(13) states in pertinent part:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

8 C.F.R. § 103.2(b)(15) states:

Effect of withdrawal or denial due to abandonment. [A] denial due to abandonment

may not be appealed, but an applicant or petitioner may file a motion to reopen under Sec. 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application or petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition. (Emphasis added).

In the present matter, counsel claims he never received the request for evidence. The May 17, 2004 request for evidence was sent to the applicant's attorney at [REDACTED] As a general matter, the law recognizes a presumption that "[a] letter properly addressed, stamped and mailed is presumed to have been duly delivered to the addressee." *Federal Deposit Ins. Corp. v. Schaffer*, 731 F.2d 1134, 1137 n.6 (4th Cir. 1984) (quoting C. McCormick, *McCormick's Handbook of the Law of Evidence* § 343 (1972)).

The record of proceedings show that the request for evidence was properly addressed, stamped and mailed to counsel by CIS. Counsel has shown nothing to indicate that this is not the case. See *Matter of Grijalva*, 21 I&N Dec. 27, 32 (BIA 1995) (the presumption of effective service can only be overcome by the affirmative defense of nondelivery or improper delivery by the Postal Service if the respondent presents substantial and probative evidence demonstrating that there was improper delivery).

With regard to counsel's claim that the applicant never received a copy of the request for evidence, in *Matter of Barocio*, 19 I&N Dec. 255 (BIA 1985), the Board of Immigration Appeals (BIA) held that notice sent to an attorney of record constitutes notice to the applicant. As noted above, counsel was notified.

The AAO notes that counsel has provided various addresses over the course of this proceeding:

[REDACTED]
(on the G-28, attached to the I-601)

[REDACTED]
(in the preparer block on the I-601)

[REDACTED]
(G-28 submitted with the appeal)

[REDACTED]
(address on counsel's stationary, attached to the I-290B)

Additionally, the applicant was requested to return the Form I-512 to CIS after it was revoked. There is no evidence that the applicant ever returned the Form I-512 to CIS.

Since the district director determined that the applicant's Form I-601 was abandoned, it cannot be appealed to the AAO. The present appeal must be rejected.

ORDER: The appeal is rejected.