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**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE:

[REDACTED]

Office: KANSAS CITY, MO

Date:

JUL 03 2007

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Kansas City, Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the District Director's decision will be withdrawn, and the waiver application declared moot.

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 having attempted to procure immigration benefits by fraud and willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with his wife.

The district director concluded that the applicant had failed to demonstrate that his spouse would face significant hardships over and above the normal economic and social disruptions involved with relocating to a new country and that the overall level of hardships presented do not amount to extreme. The application was denied accordingly. *District Director's Decision*, dated August 30, 2005.

The record indicates that on June 14, 1988, the applicant filed an application with the Immigration and Naturalization Service (now known as Citizenship and Immigration Services (CIS)), for Special Agricultural Worker (SAW) status. The Service conducted an investigation of this application in January 1990, which revealed that the applicant had made a misrepresentation in regard to his employment. On March 14, 1991, the Service determined that the applicant submitted forged documents with his SAW application.

Based on this information the district director found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and advised the applicant to file an Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act.

On appeal, counsel asserts that the district director erred in finding that the applicant did not submit enough evidence to show his spouse would suffer extreme hardship as a result of his inadmissibility. Additionally, counsel indicates that he will submit a brief and/or evidence to the AAO within 30 days. *Form I-290B and Supplement*, dated October 3, 2005. As of this date, nearly eighteen months later, no additional statements or evidence have been submitted. Therefore, the record is complete.

The AAO notes that the district director should not have considered misrepresented information contained in the applicant's legalization file in determining his inadmissibility. The district director is precluded from considering information contained in a legalization file for any purpose other than a legalization determination.

Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6) – Special agricultural workers, provides in pertinent part, that:

6) Confidentiality of information

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may -

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Construction.-

(i) In general-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(7) Penalties for false statements in applications.-

(A) Criminal penalty.-Whoever-

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or,

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.-An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

In the present case, a review of the record finds no indication that the applicant defrauded or made a willful misrepresentation on any other immigration-related application or petition. In addition, the record does not indicate that the applicant has been convicted for false statements in any application or petition. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed, the district director's decision is withdrawn and the waiver application declared moot.