



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

Office: CHICAGO, ILLINOIS

Date: MAR 12 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), thus the relevant waiver application is moot.

The applicant is a native and citizen of the Ukraine 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 entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized 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 reside in the United States with her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 2, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred in finding the applicant inadmissible and in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from [REDACTED]; a statement from the applicant's spouse; medical records for the son of the applicant's spouse; medical records for the mother of the applicant's spouse; medical records for the father of the applicant's spouse; tax statements for the applicant and her spouse; statements from the applicant; country condition reports; and bank statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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 a "broker" participating in an undercover operation provided the applicant's name to the legacy Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS),

as being a client interested in the fraudulent purchase of Lawful Permanent Resident status in the United States through bribery of an undercover Legacy INS agent. *Form G-164*. This undercover operation was ended prior to the applicant's face-to-face meeting with the undercover agent for presentation of a bribe. *Id.* In a Record of Sworn Statement, the applicant testified that a man told her she could get a work visa and she would be legal. *Record of Sworn Statement*, dated July 30, 2004. The applicant further stated that she never applied for an immigration benefit and that she filled out some forms without knowing what the forms were. *Id.* In an Addendum to the Form I-601, the applicant clarified that a Polish man approached her in a bar and told her that he could get her status changed from a tourist visa to a work visa. *Form I-601, Addendum*. He asked her to fill out some forms with basic information, such as her address and date of birth. *Id.* The applicant complied, filling out the forms with her true information. *Id.* The record includes the Forms I-130 and I-485 filled out by the applicant at that time. The AAO observes that these forms were never filed with the INS (what is now CIS), and that the information on the petitioning relative (Part B, Form I-130) was left blank as was the reason the applicant was applying to adjust to permanent resident status (Part 2, Form I-485). *See Forms I-130 and I-485*. At no point, the applicant states, did she pay money to the man who asked her to fill out the forms. *Record of Sworn Statement*, dated July 30, 2004. The applicant had her fingerprints taken at an INS fingerprint facility on January 14, 2000 in connection with the Form I-485. *See Form G-164; Record of Sworn Statement; copy of fingerprint card*. On January 26, 2000 the applicant's doctor signed a Form I-693 (medical examination) for the applicant. On December 5, 2001 the applicant married her current spouse, a naturalized U.S. citizen. He subsequently filed a Form I-130 on behalf of the applicant, which was approved on July 30, 2004. The applicant filed a Form I-485 in conjunction with this Form I-130, which the District Director denied, along with the Form I-601 for failure to show extreme hardship to a qualifying relative. *Decision of the District Director*, dated May 2, 2005. The applicant is now appealing the denial of the Form I-601.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. In his denial of the Form I-601, the District Director stated that the applicant filled out and signed an Application to Register Permanent Residence (Form I-485), filled out the alien relative portion and signed a Petition for Alien Relative (Form I-130), had a Medical Examination (Form I-693) completed, and then went to an Application Service Center and had her fingerprints taken. *Decision of the District Director*, dated May 2, 2005. The District Director further stated that the fact that the applicant did not receive an immigration benefit from this process is irrelevant because the mere fact that she sought to procure an immigration benefit through these means makes her inadmissible to the United States. *Id.* The AAO finds that the District Director has erred in his analysis. The simple act of filling out a form does not render an individual inadmissible under section 212(a)(6)(C)(i) of the Act. For a misrepresentation to fall within the purview of section 212(a)(6)(C)(i), it must have been practiced on an official of the U.S. Government, generally speaking, a consular officer or an immigration officer. 9 FAM 40.63. Although the applicant filled out the Forms I-130 and I-485, she never filed these forms with the U.S. government nor did she pay any fee. As the record notes, the undercover operation was terminated prior to the applicant's meeting with the undercover INS agent. *Form G-164*. Furthermore, the applicant did not misrepresent herself on the Form I-130 or Form I-485. She provided her true identity and she did not claim to have a petitioning relative or to be eligible to adjust her status to that of permanent resident. Had the applicant filed these forms with the Service, she may have been denied lawful permanent resident status for not being eligible for the benefit sought, but there is nothing on her signed applications that misrepresents a material fact. Under the District Director's analysis, any individual who fills out a form for which he or she is not

eligible would be found to be inadmissible for willfully misrepresenting a material fact. The AAO finds the District Director's legal reasoning with regard to misrepresentation under section 212(a)(6)(C) to be overly broad and flawed. With regard to the Form I-693 (medical examination) and fingerprints that the applicant had taken, the AAO again notes that while the applicant may have been obtaining these documents in connection with an application for which she was not eligible, she did not commit fraud or a willful misrepresentation of a material fact. Additionally, the medical examination and fingerprints could not have been used to procure any type of benefit under the Act without the filing of the Forms I-130 and I-485.

Based on the record, the AAO finds that the applicant did not willfully misrepresent a material fact or commit fraud and she is not inadmissible under sections 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to sections 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(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 is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as the underlying application is moot.