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

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MAR 15 2007

FILE:

Office: LOS ANGELES, CA

Date:

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.

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, Los Angeles, CA, 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, [REDACTED] is a native and citizen of Honduras 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 seeking to procure entry into the United States by fraud or willful misrepresentation. She 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 her U.S. naturalized citizen husband [REDACTED]

The district director found the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, her husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601), accordingly. *Decision of the District Director*, dated April 4, 2005.

On appeal, counsel states the following. The applicant entered the United States without inspection on or about September 2, 1991 by crossing the border into San Diego. The applicant had made a prior entry, using the same method, three days earlier and was apprehended by the U.S. Boarder Patrol and returned to Mexico by waiving her right to a hearing and departing voluntarily. At her questioning after this interview, she claimed to be a citizen of El Salvador, but sought no benefit from that claim. On May 22, 1997, the applicant married [REDACTED], then a lawful permanent resident of the United States. [REDACTED] filed a Form I-130 petition on the applicant's behalf on January 14, 1998, and later obtained his U.S. citizenship in 2001. The couple has two U.S. citizen children. The applicant filed a Form I-485 on April 2, 2002, and attended an interview regarding the application on January 9, 2002. At the interview, the examiner informed the applicant that she had committed fraud in entering the United States and suggested that she file the Form I-601, which she did on September 3, 2003. The director's decision indicates that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for using a false identify for the purpose of entering the United States on or about September 2, 1991. The applicant is not inadmissible by virtue of her prior conduct in entering the United States. The applicant never admitted to or stated that she used a false identify for the purpose of entering the United States. She only stated that she was El Salvadorian after she was apprehended; she presented no documentation to this effect and she did not seek any immigration benefit from the claim. All of the applicant's paperwork describes the fact that she entered the country by illegally crossing the border after having been turned around on the previous attempt three days earlier. Therefore, it is an error of law and fact and an abuse of discretion to determine that her entry without inspection contained elements of fraud and/or misrepresentation that would merit a finding of inadmissibility under the Act. The applicant did not materially misrepresent her immigration status in the United States when she completed and signed her Form I-485. The applicant answered "no" to the question on section 3 of the Form I-485 concerning deportation from the United States. The record reveals that she was never deported, but was returned to Mexico immediately after her apprehension on her first attempt to enter the United States; this is not considered a deportation under immigration law. The applicant was never excluded from the United States. If the applicant is found inadmissible, she has substantial factors that would support the granting of a waiver under section 212(i). She has a U.S. citizen spouse and a lawful permanent resident mother in the United States. She also has siblings and three U.S. citizen children. The applicant's husband has no family ties outside the United States. Given the social and economic conditions in Honduras, as described in the U.S. Department of State annual report, it

would be an extreme hardship for the applicant's husband, a person with no familial or professional ties to Honduras, to live there. *Counsel's Appeal*.

The entire record was reviewed and considered in rendering this decision.

The AAO will first address the director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The record reflects that the applicant entered the United States on or about September 2, 1991 without inspection and was apprehended near the border and interviewed by an immigration officer. At the interview she gave a false identity, claiming to be a citizen of El Salvador and married to a man who accompanied her across the border. She admitted at the interview that she entered the United States illegally without being inspected. She claimed to never have obtained a passport or any other travel documents. She indicated at the interview that she knew that she needed a passport and visa to enter the United States and she did not have money to pay for a visa. There is a memo in the record reflecting that the Order to Show Cause contained in the record was not filed with the immigration court and is considered invalid. The record suggests that the applicant was allowed to voluntarily depart from the United States without being removed at government expense. She entered again without inspection three days after the interview. *Form I-213; Form I-221*.

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.

On appeal, counsel contends that the applicant's misrepresentation of her identity was not used for the purpose of entering the United States and that she presented no documentation as to the false identity and sought no immigration benefit from the claim. The Board of Immigration Appeals (BIA) decision in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) sets forth the elements of a material misrepresentation as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

Based on these elements, the applicant's misrepresentation of identity was not material. Her claim to Salvadoran citizenship was not used in connection with her entry into the United States. She was apprehended at the border for illegally entering the United States without inspection; her claim to Salvadoran citizenship was made during an interview following her apprehension.

Furthermore, the record reveals that the applicant did not make a material misrepresentation in her Form I-485. The applicant answered "no" to the question on section 3 of the Form I-485 concerning deportation from the United States. The record reveals that the applicant was never deported and there is no evidence in the record that she had been removed from the country at government expense.

Based on the foregoing, counsel's assertion that the applicant's misrepresentation was immaterial is persuasive. The applicant has established that she was erroneously deemed inadmissible. The 212(i) waiver of inadmissibility is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

ORDER: The April 4, 2005 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.