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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

712

FILE: [REDACTED] Office: PANAMA CITY, PANAMA

Date: OCT 30 2007

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

[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, Panama City, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant, a citizen of Colombia, was found 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States with her husband and daughter.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her spouse, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband would suffer extreme hardship if she is required to remain in Colombia, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States on January 5, 2001 through the transit without visa (TWOV) program. She arrived at Miami International Airport after having presented herself as a TWOV en route to Spain during the boarding and paperwork processes. Documentation in the file confirms that, after entering the airport transit lounge, the applicant claimed political asylum.

Although the applicant admitted that she never intended to travel to Spain but rather claim political asylum in the United States, and therefore fraudulently presented herself as a TWOV en route to Spain, her commission of fraud occurred only *en route* to the United States. She did not attempt to commit misrepresentation at the time of her admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984).

While this is a form of misrepresentation, it is not the type of misrepresentation covered by section 212(a)(6)(C) of the Act, as the applicant was not applying for a visa, other documentation, admission into the United States, or any other benefit under the Act at the time she made the misrepresentation. The AAO agrees with counsel that, in this case, the applicant made a "timely retraction" of any misrepresentations she had made in order to reach Miami International Airport. The record establishes that she requested political asylum when she entered the airport transit lounge; she immediately admitted that she had never intended to continue to Spain, and there was no earlier point at which she could have done so. Thus, her misrepresentation does not fall under section 212(a)(6)(C) of the Act, and she is not inadmissible to the United States.

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 the 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 dismissed as the waiver application is moot.