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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

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[redacted]

FILE: [redacted] Office: BALTIMORE DISTRICT OFFICE Date: OCT 3 1 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 South Korea, 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 lawful permanent resident of the United States, 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 with his wife and son.

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

On appeal, counsel asserts that the decision of the District Director was based upon misinterpretation of the facts, and that the applicant did not violate section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Counsel also contends, alternatively, that the applicant's wife would suffer extreme hardship if the applicant were required to return to South Korea. 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.

The record indicates that the applicant entered the United States on March 12, 2002 with a tourist visa, and was granted permission to remain, lawfully, until September 11, 2002. He filed Form I-485, Application to Register Permanent Residence or Adjust Status, on September 10, 2002. The District Director, therefore, determined that the applicant had obtained the tourist visa fraudulently.

The Department of State Foreign Affairs Manual states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect

to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident..." *DOS Foreign Affairs Manual,* § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." *Id.* at § 40.63 N4.7-1(3).

Under this rule, "when violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility." *Id.* at § 40.63 N4.7-4.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant applied for permanent residence after entering on a B-1/B-2 visa. The application for permanent residence is violative conduct under the 30/60 day rule. However, the application for permanent residence took place on September 10, 2002, more than 60 days after the applicant's entrance on March 12, 2002. In addition, while his wife was the beneficiary of a labor certificate at the time the applicant entered the United States, the visa petition on which he was named beneficiary was not filed until May 1, 2002, after his arrival. This further diminishes the possibility of a preconceived intent to immigrate.

The District Director also found that the applicant had committed fraud based upon misrepresentations at the time he applied for the tourist visa. As noted by the District Director in his notice of intent to deny the Form I-485, the applicant made three applications for a tourist visa: (1) October 20, 2000; (2) July 26, 2001; and (3) November 29, 2001. The first two were denied; the third was granted. According to the District Director, the applicant stated on each application that, while his wife had a nonimmigrant visa, she was not in the United States. Since his wife entered the United States on the visa on June 23, 2001, the statement that she was not in the United States was not true at the time the second and third applications were filed. In his June 1, 2006 affidavit, the applicant stated the following:

> In October 2000, I applied for a visa to visit the United States. In Korea, most people typically hire professionals to handle visa matters . . . the visa application was denied due to problems relating to tax returns. . . .
>
> Sometime in summer of 2001, I applied for a visa again . . . I did not know anything about immigration law or visa proceedings, but he [the agent] seemed very knowledgeable, so I trusted him. . . .
>
> I did not hear from him for many months. I did not know that the agent filed visa application[s] twice. Later, I found out that the visa application dated July 26, 2001 was denied but the agent filed another application on November 29, 2001. Both times I was not interviewed at the U.S. Embassy. Instead, I only received approval notification for the November 29, 2001 application. . . .
>
> I honestly do not know what was written on the applications because I did not prepare the applications myself. Furthermore, since I was never interviewed, I never made representations regarding [the] whereabouts of my family. Therefore, if there was any misrepresentation made on the application, I honestly was not aware of it. . . .

Counsel notes on appeal the possibility that, since the applicant's wife did not travel to the United States until June 23, 2001, she had not yet traveled at the time the applicant spoke with the agent who prepared the visa application. Counsel states that the likely reason for the misstatements on the applications were that the agent received the information from the applicant before his wife traveled to the United States, and that he did not contact the applicant prior to filing the third application to inquire as to whether there had been any changes.

As noted by the District Director, the applicant's tourist visa applications indicated that his wife possessed a valid tourist visa. This would be sufficient to raise any necessary questions regarding the applicant's ties to South Korea, which the District Director stated were shut off by the failure to state that his wife was in the United States.[1] As the applicant was never interviewed for his visa he was never afforded the opportunity to correct this minor inconsistency. Accordingly, the AAO agrees with counsel that this misrepresentation was not material.

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 his wife has established extreme hardship under section 212(i) of the Act.

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

[1] Moreover, the AAO notes that the applicant used his tourist visa on January 22, 2002, and returned to South Korea on February 6, 2002.