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

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H-2

FILE:

Office: Newark, NJ

Date:

APR 04 2008

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), 8 U.S.C. section 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed as the waiver application is moot.

The applicant is a native and citizen of the Guatemala who 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 having sought to procure a visa, other documentation, or admission to the United States or other benefit provided by the Act by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse 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 her U.S. citizen spouse.

The record reflects that the applicant was admitted to the United States in B-2 status on November 29, 1999 with a period of authorized stay expiring on May 29, 2000. The record shows that the applicant has remained in the United States since this entry. The applicant's passport contains a stamp indicating that she returned to Guatemala on March 3, 2000. At her interview on July 15, 2004, the applicant stated that she sent her passport to an uncle in Guatemala who arranged to have the stamp placed therein. The applicant married her spouse, [REDACTED] a naturalized U.S. citizen, in the United States on September 6, 2003. On January 22, 2004, the applicant's spouse filed the Form I-130 naming the applicant as beneficiary and the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). That Form I-130 petition was approved on September 28, 2005.

The district director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having the fraudulent stamp placed in her passport because, according to the applicant's testimony, "you stated that you did not want to lose the visa and that you had only been allowed to stay in the U.S. for six months." *Decision of District Director*, dated February 15, 2006. The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied her waiver application accordingly. *Id.*

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.

While the evidence in this case does show that the applicant had a fraudulent stamp placed in her passport in Guatemala showing that she returned to Guatemala after being admitted to the United States in B-2 status on November 29, 1999, there is no evidence that she ever represented this stamp as authentic in an effort to procure a visa, other documentation, or admission to the United States or other benefit provided by the Act. On her adjustment application, the applicant indicated that she entered the United States in B-2 status on November 29, 1999 and remained in the United States after her period of authorized stay expired. Although the applicant testified that she had the stamp placed in her passport in order to show that she did not overstay her visa, there is no evidence that she ever acted on this intention by presenting her passport and visa to an

official of the U.S. government and representing the fraudulent stamp as authentic in an effort to procure a visa, other documentation, or admission to the United States or other benefit provided by the Act. Rather, the record reflects that the applicant has consistently indicated on her applications and in her testimony that she overstayed her visa and that the stamp showing her return to Guatemala in 2000 is not authentic. Therefore, as it has not been established that the applicant misrepresented a material fact for the reasons specified in section 212(a)(6)(C) of the Act, the district director's finding of inadmissibility must be withdrawn. No waiver of inadmissibility is necessary.

In proceedings for application for waiver of grounds of inadmissibility under section 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 has met that burden.

ORDER: The appeal is dismissed as the waiver application is unnecessary.