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U.S. Citizenship
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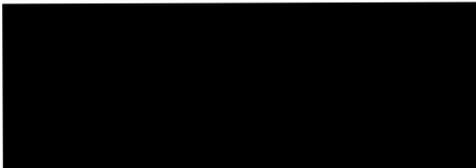


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 24 2008

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), 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed, the prior decision of the director is withdrawn and the application for waiver of inadmissibility is declared moot.

The applicant is a native and citizen of Lebanon 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 his 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 his U.S. citizen spouse.

The record reflects that the applicant's ex-wife, [REDACTED] filed an I-130 petition naming the applicant as beneficiary on November 20, 1992. The applicant also filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On January 27, 1995, the Director of the New York City District issued a decision to [REDACTED] denying the Form I-130 petition on the basis that she had failed to establish that there was a bona fide marital relationship. *Decision of District Director [REDACTED]* dated January 27, 1995. Director [REDACTED] noted that there were discrepancies between the testimony of the applicant and [REDACTED] at their *Stokes* interview and stated that the denial was also based on the submission of a bank statement that was "fraudulently obtained." *Id.* On March 15, 1995, Director [REDACTED] issued a decision to the applicant denying the Form I-485 application on the basis that the visa petition supporting the application had been denied. *Decision of District Director [REDACTED]* dated March 15, 1995.

On December 11, 1995, the applicant and [REDACTED] divorced. The applicant married his current spouse, [REDACTED], on October 7, 2002 in the United States. The applicant's spouse, a naturalized U.S. citizen, filed a Form I-130 petition naming the applicant as beneficiary on December 9, 2002. The petition was approved on July 27, 2005. The applicant also filed a Form I-485 application on December 9, 2002.

On July 30, 2005, the Director of the New York City District issued a decision denying the I-485 application. *Decision of District Director [REDACTED]*, dated July 30, 2005. In the decision, Director Gantner found the applicant inadmissible under section 212(a)(6)(C)(i) for having testified that he never committed or attempted to commit fraud or submitted fraudulent documents to obtain an immigration benefit. *Id.* Director [REDACTED] noted that evidence in the applicant's file showed that the applicant had "submitted a fraudulent bank letter as part of an application to adjust status." *Id.*

On August 19, 2005, the applicant's former counsel submitted a motion to reopen and reconsider the decision denying the applicant's Form I-485 application. *Motion to Reopen and Reconsider of [REDACTED]*, dated August 17, 2005. Former counsel asserted that the decision should be reconsidered because the applicant was neither aware of nor involved in the submission of a fraudulent document. *Id.* Former counsel indicated that the document in question was submitted by the applicant's ex-wife in support of the Form I-130 petition she filed, and therefore the applicant had not misrepresented a material fact by failing to reveal the fraud committed by his ex-wife. *Id.* Former counsel observed that the I-130 petition was denied for failure to sufficiently prove a bona fide marital relationship, not for fraud. Former counsel also asserted that the

decision should be reopened for the consideration of an Application for Waiver of Ground of Excludability (Form I-601), which was submitted with the motion. *Id.*

On March 22, 2006, the director of the California Service Center issued decisions dismissing the motion to reopen and reconsider and denying the Form I-601 waiver application. The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied his waiver application accordingly. *Decision of [REDACTED] Denying Form I-601*, dated March 22, 2006. The director dismissed the motion to reopen and reconsider because the motion did “not state new facts and [was] not supported by affidavits or other documentary evidence.” *Decision of [REDACTED] Dismissing Motion to Reopen and Reconsider*, dated March 22, 2006.

On appeal, counsel asserts that director erred in not considering all of the hardship factors in aggregate. Counsel contends that the applicant’s spouse would suffer extreme hardship if she were separated from the applicant and had to raise the couple’s two children by herself while also completing her college education. In support of the appeal, counsel submits a brief, a copy of the applicant’s divorce judgment, an affidavit from the applicant’s spouse, birth certificates, diplomas, a psychological evaluation from [REDACTED], letters from the applicant’s spouse’s sisters, tax statements, insurance documents, medical reports, lease documents, various receipts, utility bills and country conditions reports for Lebanon. The entire record has been reviewed in rendering a decision on the appeal.

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 review of the record, the AAO determines that the applicant is *not* inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO observes that the bank statement found to be fraudulent was submitted in support of the Form I-130 petition filed by the applicant’s ex-wife, not by the applicant. Though the submission of the “fraudulently obtained” document was noted in the decision denying that petition, the petition was denied on the ground that the petitioner had failed to prove a bona fide marital relationship rather than on a determination of marriage fraud. Furthermore, the decision was issued to the applicant’s ex-wife, not the applicant. In the decision issued to the applicant denying his first Form I-485 petition, there is no mention of the submission of the fraudulent document or a finding that the applicant was inadmissible/excludable for having sought an immigration benefit by fraud or willfully misrepresenting a material fact. In his affidavit submitted on appeal, the applicant asserts that he was unaware his ex-wife had submitted a document found to be fraudulent until he received the July 30, 2005 decision denying his most recent adjustment application. The record does not show that the applicant was involved in or aware of the submission of the fraudulent document by his ex-wife. Thus, the AAO determines that there is insufficient evidence in the record demonstrating that the applicant, who was only the beneficiary of the I-130 petition filed by his ex-wife, sought to procure an immigration benefit by fraud or willfully misrepresenting a material fact in connection with his first adjustment application. Consequently, as the applicant did not commit fraud in connection with that application, he also did not misrepresent a material fact by failing to disclose in

connection with his most recent adjustment application the prior submission of a fraudulent document by his ex-wife.

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 director's finding of inadmissibility must be withdrawn. No waiver of inadmissibility is necessary.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the application for waiver of inadmissibility is declared moot.