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

PUBLIC COPY

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[REDACTED]

FILE:

Office: PHILADELPHIA, PA

Date:

DEC 05 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)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Georgia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a benefit under the Act by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 4, dated September 29, 2008.

On appeal, counsel states that there is no evidence that the applicant misrepresented herself as a transit without visa (TWOV) passenger, the applicant's passport did not contain any nonimmigrant visas and there is no indication that she had any document indicating TWOV status. *Form I-290B Statement*, at 1, received October 17, 2008.

The record includes, but is not limited to, counsel's statement and the applicant's immigration documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on February 7, 2003, the applicant departed Georgia and arrived in the United States as a TWOV applicant in route to Jamaica. *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated February 7, 2003. The record includes the applicant's Form I-94T, TWOV Arrival/Departure Record and airline ticket. However, the applicant admitted under oath that her original intention when she purchased her airline tickets was to come to the United States and request asylum. *Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, at 3, dated February 7, 2003. As the applicant misrepresented herself as a TWOV passenger in order to gain entry to the United States, she is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that:

- (1) 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

However, the AAO will not address the applicant's extreme hardship claim as the applicant does not have an underlying Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant's Form I-485, which was filed as a derivative spouse of a 2008 diversity lottery visa recipient, was denied on September 29, 2008. The AAO notes that issuance of 2008 diversity visas to successful individuals and their eligible family members must have occurred during Fiscal Year 2008, i.e., by midnight, September 30, 2008. This date has passed, and the applicant is no longer eligible to benefit from the Form I-485 she filed on September 12, 2008. As there is no longer a viable Form I-485 underlying the applicant's Form I-601 (and appeal), the applicant's appeal will be dismissed.

ORDER: The appeal is dismissed.