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

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FILE:

Office: LOS ANGELES, CA

Date:

DEC 05 2008

IN RE: Applicant

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 PETITIONER:

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 District Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant, a native and citizen of Mexico, admitted under oath, on July 17, 2002, that she had attempted entry to the United States in May 1978 using a fraudulent document, namely, a border crossing card that was not validly issued to her. She was thus 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant 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 child, born in June 1977.

The district 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 District Director*, dated February 6, 2006.

In support of the appeal, counsel for the applicant submits a brief and an affidavit from the applicant, dated March 3, 2006.

Counsel, in his brief, states that in this case, "it is unclear that the government produced any evidence that the Applicant in fact materially misrepresented herself at the time of entry in 1978.... It is unclear what in fact happened in 1978.... It seems apparent that there is no evidence that the Applicant in fact made a false statement to the Immigration Service officer...." *Brief in Support of Appeal*.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

It is clear to the AAO that the applicant misrepresented herself, as documented by the applicant's own admission to a District Adjudications Officer on July 17, 2002, and in her affidavit submitted by counsel in support of the appeal, dated March 3, 2006. As she states in said affidavit,

I attempted to enter the United States on May 13, 1978 at San Ysidro, California with a border crossing card that was not validly issued to me...."

Affidavit of [REDACTED] dated March 3, 2006.

As such, the AAO concurs with the district director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 states, in pertinent part, the following:

(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(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the instant appeal, the applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(i) of the Act exists, namely, a U.S. citizen or lawful permanent resident spouse and/or parent. As such, the instant appeal is dismissed.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.