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U.S. Citizenship  
and Immigration  
Services

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H2

FILE:

Office: ROME, ITALY

Date: JUN 17 2008

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the 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.

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 Acting District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and the relevant waiver application is therefore moot.

The applicant is a native and citizen of Romania who entered the United States as a visitor for pleasure on February 25, 1991, applied for political asylum, and remained until July 1998, when he returned to Romania to apply for an immigrant visa. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his spouse.

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of Acting District Director*, dated May 27, 2005.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“CIS”) unjustly denied the waiver because the evidence is sufficient to prove hardship to the applicant’s wife if he is not permitted to return to the United States. The applicant additionally asserts that CIS erred in determining that he is inadmissible under section 212(a)(6)(C)(i) of the Act because he never lied or made a misrepresentation concerning his stay in the United States. The applicant further states that their continued separation constitutes extreme hardship to his wife. His wife states that they are a united family that has never been separated, they are suffering emotionally, and they would like to spend the rest of their days together. *See letter from Florea Iancu* dated November 25, 2004.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

In the present case, the record reflects that the applicant is a sixty year-old native and citizen of Romania who resided in the United States from February 1991 to July 1998. The applicant entered the United States with a B-2 visitor visa on February 25, 1991 and applied for asylum five days after his entry. He returned to Romania in July 1998 to apply for an immigrant visa after his wife won the diversity visa lottery. At this time an appeal of the denial of his asylum application was pending with the Board of Immigration Appeals. During his interview for the immigrant visa the applicant was questioned about his intent to apply for asylum when he applied for the nonimmigrant visa and entered the United States in 1991. He was denied an immigrant visa because he was found inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting his intent to remain in the United States and apply for asylum when he applied for his nonimmigrant visa and when he was inspected and admitted as a B-2 visitor for pleasure by an immigration officer in February 1991. *See decision of Acting District Director*.

The decision of the Acting District Director states that during his interview for the immigrant visa, the applicant "was found to have entered the United States by misrepresenting the purpose of his previous entry." The record contains the applicant's sworn statement dated July 27, 1998, in which he stated he applied for a visa in 1991 as a tourist. The applicant was asked if he told the officer when he applied for the tourist visa that he wanted to apply for asylum when he arrived in the United States, and he said no. He was also asked whether he intended to remain in the United States when he applied for the visa and he said, "Yes, if I could adapt." The applicant was then asked the following:

When did you decide to submit an application for political asylum?  
5 days after I arrived in the United States.

Why did you apply for political asylum?  
Because we were not in agreement with the political situation in the country.

When you left the country had you decided to remain in the United States?  
We wanted to see what the situation was there and find out if I could adapt.

When did you first speak to your wife about your intention to remain in the United States?  
Five days after I arrived, when I submitted the application.

The AAO finds that in his sworn statement the applicant did not admit to misrepresenting his purpose of entering the United States, and the record does not otherwise establish that he misrepresented himself when applying for the nonimmigrant visa or upon arrival in the United States. He did not indicate that at the time he entered the United States he had already decided to apply for asylum and remain in the United States, but rather stated that he wanted to see the situation in the United States and decide if he could adapt. There is no evidence on the record to establish that the applicant had already decided to remain in the United States when he was admitted as a B-2 visitor in February 1991. Since the record does not establish that the applicant procured admission to the United States through fraud or misrepresentation of a material fact, he is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

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 is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The appeal is dismissed as moot.