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U.S. Citizenship  
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Services

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H12



FILE:



Office: MEXICO CITY, MEXICO  
(PANAMA CITY, PANAMA)

Date: **MAY 20 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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal dismissed as the underlying waiver application is moot.

The applicant is a native of Australia and a citizen of Great Britain who has been found to be 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the fiancée of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to benefit from the Form I-129F, Petition for Alien Fiancé(e), approved on her behalf.

The district director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant's waiver request were denied. He denied the application accordingly. *Decision of the District Director*, dated October 25, 2007.

On appeal, the applicant states that the district director erred in denying the Form I-601, Application for Waiver of Grounds of Inadmissibility, by failing to properly consider the hardship factors, misstating the underlying facts of the case, and misinterpreting the legal arguments in support of the waiver request. *Letter in support of the Form I-290B, Notice of Appeal or Motion*, dated November 15, 2007.

The AAO notes that the applicant appears to be represented as record contains a Form G-28, Notice of Appearance as Attorney or Representative, filed in connection with the appeal. However, the Form G-28 is not signed by the applicant. Accordingly, the applicant will be considered as self-represented, although all materials submitted in support of the appeal will be reviewed.

The record indicates that the applicant's fiancé, [REDACTED], filed the Form I-129F on February 8, 2006. The petition was approved on July 5, 2006. Although the applicant was thereafter interviewed at the U.S. embassy in Caracas, Venezuela, no fiancée visa was issued to her based on a finding that she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation in connection with a previously filed H-1B nonimmigrant petition.

Section 212(a)(6)(C)(i) of the Act states 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.

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.

If an alien seeking a fiancé(e) visa is found to be inadmissible to the United States, the alien's ability to seek a waiver of inadmissibility is governed by the regulation at 8 C.F.R. § 212.7(a), which provides:

- (a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant*. An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancé(e) is equivalent to a spouse for the purposes of the extreme hardship statute, the AAO relies on the regulation at 22 C.F.R. § 41.81, which states:

- (a) *Fiancé(e)*. An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

(3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

(d) *Eligibility as an immigrant required*. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

Prior to determining whether the record in the present case establishes the applicant's eligibility for a waiver under section 212(i) of the Act, the AAO will first consider the basis for the district director's determination that she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having attempted to enter the United States through the use of fraud or the willful misrepresentation of a material fact.

The evidence of record relating to the inadmissibility finding is limited to: consular memoranda issued by the U.S. Embassy in Caracas on December 12 and December 13, 2006; an undated Memorandum Report of Ineligible Applicant for Immigrant Visa Who is Applying for Relief under Section 212(h) or (i) of the Immigration and Nationality Act; 2006 electronic mail responses to the office of Senator Bill Nelson (D-

Florida) from the Department of State's Bureau of Consular Affairs and the Visa Section at the U.S. Embassy in London; electronic mail correspondence internal to the Department of State, dated 2006; an undated memorandum from the Department of State's Kentucky Consular Center; and H-1B petition materials. The H-1B materials include a 2005 letter supporting the H-1B petition filed by ThinkInk Communications, LLC; a 2003 academic evaluation submitted to establish the applicant's employment and training history as the equivalent of baccalaureate degree in marketing; letters related to the applicant's previous employment; the applicant's resume; a website printout listing the applicant as an employee of The Right Brain; and the Form I-129W, H-1B Data Collection and Filing Fee Exemption, dated July 1, 2005. Although the record references a revocation memorandum prepared in connection with the H-1B petition benefiting the applicant, the memorandum is not included in the record.

The AAO notes that the district director based his determination of inadmissibility on the applicant's misrepresentation of her education and qualifications in connection with the H-1B nonimmigrant visa petition benefiting her, as documented in a consular memorandum apparently issued by the U.S. Embassy in London, which is not found in the record and may be the revocation memorandum referenced elsewhere. However, the record indicates that the U.S. Embassy in London, as of June 2, 2006, agreed to reconsider and reevaluate its section 212(a)(6)(C) finding with regard to the applicant. *Electronic mail response to [REDACTED] from [REDACTED],* dated June 2, 2006. The AAO finds no evidence in the record to establish that the Department of State's investigation of the applicant's H-1B case has been completed or that a final decision regarding her inadmissibility under section 212(a)(6)(C)(i) of the Act has been reached.

In that the record contains insufficient documentation to reach an independent determination that the applicant engaged in fraud or willful misrepresentation in connection with the H-1B petition benefiting her and the U.S. Embassy is reevaluating its inadmissibility finding under section 212(a)(6)(C)(i) of the Act, the AAO will withdraw the district director's decision in this matter. It finds that the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act has not been established and, therefore, that the applicant is not required to file the Form I-601. Accordingly, the appeal will be dismissed as the underlying waiver application is moot.

**ORDER:** The decision of the district director is withdrawn. The appeal is dismissed as the underlying waiver application is moot.