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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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H₂



FILE

Office: NEW DELHI, INDIA

Date:

NOV 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:

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.

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 Officer-in-Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 50-year-old native and citizen of India. She was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her sibling. She presently seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may be admitted to the United States as a lawful permanent resident.

The officer in charge found the applicant to be inadmissible based on her misrepresentations on her visa application in 2002. He further found that the applicant was ineligible for a waiver finding that she lacked a qualifying relative.

On appeal, the applicant submits a statement by her son elaborating on the circumstances surrounding the applicant's visa interview. The applicant maintains that she is facing hardship due to her family's separation, and that her misrepresentation was due to a mistake.

Section 212(a)(6)(C)(i) of the Act provides:

In general.--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, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien”

The officer-in-charge found the applicant inadmissible based upon her misrepresentations before the consular officer. The circumstances surrounding the 2002 consular interview, even as explained by the applicant's son, do not support his claim that the misrepresentations were made by mistake. Therefore, the AAO finds that the applicant is inadmissible as charged.

The question remains whether the applicant qualifies for a waiver. A waiver under section 212(i) of the Act is available to an applicant who “is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence.” The applicant does not have a U.S. citizen or lawful

permanent resident spouse or parent.¹ Therefore, the applicant is ineligible for a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. *See* 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.

¹ The record indicates that the applicant's parents are deceased, and that her spouse is not a U.S. citizen or lawful permanent resident.