

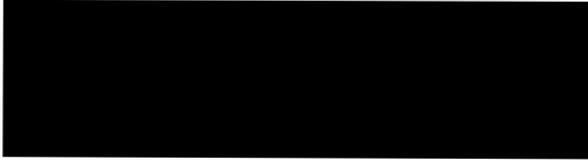
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U.S. Citizenship  
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Services

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FILE:



Office: MEXICO CITY, MEXICO  
(PANAMA CITY)

Date:

NOV 24 2009

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:



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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not 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 Colombia who was 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 entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 12, 2006.

On appeal, counsel for the applicant contends that Citizenship and Immigration Services (CIS) erred in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative, as required for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*. The record also includes a statement from the applicant noting that it was not her intention to misrepresent herself. *Statement from the applicant*, dated November 2, 2005.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from [REDACTED] LCSW, ACSW, BCD; published country condition reports; statements from the applicant and her spouse; employment letters for the applicant's spouse; report cards for the applicant's children; tax statements for the applicant's spouse; and a bank statement letter. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that on August 11, 2000 the applicant married her spouse in Colombia. *Marriage certificate*. On April 24, 2001 the applicant's spouse obtained a judgment of divorce from his first wife. *Divorce certificate*. On May 7, 2001 the applicant's United States citizen spouse filed a Form I-129F, Petition for Alien Fiance(e), on behalf of the applicant, which was subsequently approved on June 24, 2001. *Form I-129F*. On September 28, 2001 the applicant was admitted to the United States on a K-1 visa. *Form I-94, Departure Record*. According to consular notes, the applicant had stated she was not married during her fiancée interview when she had married her spouse on August 11, 2000. *Consular notes*, dated December 5, 2005. As the applicant was already married to her United States citizen spouse when she applied for the K-1 visa, the District Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The AAO notes that regardless of whether the applicant had married her spouse on August 11, 2000, that marriage is not considered to be valid under United States law as the applicant's spouse's divorce was not final until April 24, 2001. As such, the applicant was not legally married to her spouse at the time she applied for and ultimately received her K-1 visa. According to the applicant's spouse, at the time he and the applicant filed the K-1 visa papers, it was their impression or understanding that by doing so, they were following proper procedure as he was told that his divorce papers were not valid. *Statement from the applicant's spouse*, dated October 10, 2005. As the applicant's spouse thought that he and the applicant were not legally married, he filed a Form I-129F petition for her. *Id.* During her K-1 interview, the applicant stated to the United States consular officer that she was not married. *Consular notes*, dated December 5, 2005. This was in fact correct. The applicant states that it was not her intention to misrepresent herself before the United States government. *Statement from the applicant*, dated November 2, 2005. The AAO notes that the applicant, upon learning that she was not properly documented to enter the United States, returned to her native country of Colombia and the applicant's spouse filed a Form I-130, Petition for Alien Relative on behalf of the applicant. *See Waiver Interview Memorandum Report; Form I-130*, dated November 22, 2002. The applicant continues to remain in Colombia. *Form I-601, Application for Waiver of Ground of Excludability*. The AAO finds that the applicant's voluntary return to her native country and the filing of a Form I-130 by her spouse serve as further evidence that it was not the intention of the applicant to gain an immigration benefit by misrepresenting herself. As the applicant's marriage was not recognized as a valid marriage at the time of her consular interview to receive her K-1 visa, she did not commit a misrepresentation and the AAO does not find her to be inadmissible under section 212(a)(6)(C)(i) of the Act.

Based on the record, the AAO finds that the applicant did not willfully misrepresent a material fact or commit fraud and she is not inadmissible under sections 212(a)(6)(C)(i) of the Act. The waiver filed pursuant to sections 212(i) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under sections 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 the underlying application is moot.