

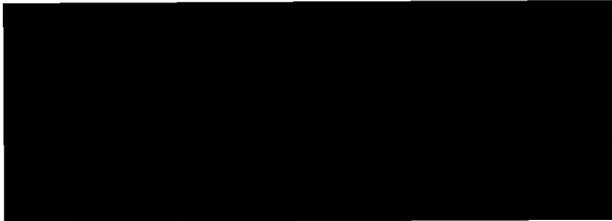
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW DELHI, INDIA

Date: OCT 30 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 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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), new Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act 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).

The OIC concluded that the applicant failed to establish that he has a qualifying relative who may serve as a basis for a waiver of inadmissibility under section 212(i) of the Act. *Decision of the OIC*, dated May 8, 2006. Thus, the district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal, the applicant contests whether he should have been deemed inadmissible for fraud or misrepresentation. *Statement from Applicant's Brother on Form I-290B*, dated June 8, 2006; *Statement from Applicant*, undated.

The record contains, in pertinent part, statements from the applicant, the applicant's sister, and the applicant's brother; a copy of the applicant's passport; a copy of the applicant's brother's death certificate, and; documentation in connection with the applicant's immigrant visa application. 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 the applicant's brother, [REDACTED], filed a Form I-130 relative petition on behalf of the applicant, which was approved. [REDACTED] died on September 17, 1979, thus the approved Form I-130 petition was no longer valid. However, the applicant continued to seek as immigrant visa based on the petition filed by his deceased brother.

The applicant appeared before a U.S. consular officer in Mumbai, India on February 28, 1980 for an interview in connection with his application for an immigrant visa. The applicant did not reveal that his brother had died. A memorandum from the U.S. Consulate in Mumbai reports that the applicant "told the interviewing officer that he did not have any contact with [his brother]," and that "he did not know about his brother's death." *Interoffice Memo from U.S. Consulate, Mumbai, India*, dated March 8, 2001. When questioned by immigration officers upon his attempted entry to the United States on October 4, 1980, the applicant executed a sworn statement in which he provided that he was informed about his brother's death two to three days after the event occurred. *Applicant's Sworn Statement*, dated October 4, 1980. As the applicant asserted that he knew about his brother's death two to three days after it occurred, his representation at his interview in Mumbai on February 28, 1980 that he was unaware of his brother's death was properly deemed a misrepresentation. This misrepresentation was material, as whether the applicant's brother was living had a direct bearing on whether the Form I-130 he filed on the applicant's behalf could serve as a basis for the applicant's immigrant visa.

On appeal, the applicant asserts that he was unaware of U.S. immigration law. Lack of knowledge of U.S. law is not a defense to making a material misrepresentation. Based on the foregoing, the applicant has not shown that he was erroneously deemed inadmissible for making a material misrepresentation to obtain a benefit under the Act. Section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences is not directly relevant to section 212(i) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Upon review, the applicant has not established that he has a qualifying relative, as contemplated by section 212(i)(1) of the Act. The applicant has not claimed or shown that he has a U.S. citizen or lawful permanent resident spouse or parent. As the applicant has not established that he has a qualifying relative, he has not shown that he is eligible for a waiver of inadmissibility under section 212(i) of the Act.

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 has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.