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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

H2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **APR 06 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the director for continued processing.

The applicant is a native and citizen of Ecuador 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 fraud or willful misrepresentation when she presented an Ecuadorian passport with a fraudulent Form I-551 stamp in an attempt to obtain a Connecticut driver's license. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director concluded that the applicant failed to establish that her U.S. citizen spouse would suffer extreme hardship as a result of her removal from the United States. The application was denied accordingly. *Decision of the Director*, dated October 31, 2006.

On appeal, counsel asserts that the director ignored controlling law in *Matter of Cervantes*, 22 I&N Dec. 560 and erroneously determined that the applicant's spouse would not suffer extreme hardship as a result of her removal. *Form I-290B*, November 21, 2006.

The record states that in an attempt to obtain a Connecticut driver's license the applicant presented an Ecuadorian passport containing a fraudulent Form I-551 stamp.

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.

The AAO finds that the applicant did not make a misrepresentation as defined under section 212(a)(6)(C) of the Act. A Connecticut driver's license is not a benefit provided under the Act. A state driver's license is issued by the state government. A state driver's license is not issued by the U.S. Citizenship and Immigration Services, and is not considered an immigration benefit. Thus, as the applicant has not made a misrepresentation under 212(a)(6)(C) of the Act, she is not inadmissible.

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 met that burden. The applicant's waiver of inadmissibility application is thus moot and the appeal will be dismissed.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.