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

U.S. Citizenship
and Immigration
Services

tlr

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER Date: **APR 13 2009**

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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

John F. Grissom, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter 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 acting district director shall reopen the applicant's Form I-485 for action consistent with this decision.

The record reflects that the applicant is a native and citizen of Cuba who was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record also reflects that the applicant is the spouse of a Legal Permanent Resident. She seeks a waiver of inadmissibility in order to remain in the United States with her husband and children and adjust her status to that of a lawful permanent resident.

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.

The director stated that the applicant was inadmissible because documents in United States Citizenship and Immigration Services (USCIS) records reflect that the applicant attempted to enter the United States on October 11, 1999 by presenting a fraudulent Guatemalan passport bearing the name [REDACTED]. *Decision of the Director*, dated August 28, 2006.

The district director further found that the applicant failed to establish extreme hardship to her Legal Permanent Resident spouse and denied her Form I-601 application accordingly. *Decision of the Director*, dated August 28, 2006.

On appeal, counsel contends that the applicant arrived in the United States on October 11, 1999 and was in possession of a fraudulent passport at that time. However, counsel states that immediately upon her arrival in the United States, the applicant informed an immigration officer at primary inspection of her true name and identity. Counsel asserts that the applicant stated that she wanted to apply for asylum and was therefore paroled into the United States at the airport. He states that the applicant made a timely retraction of the fraudulent passport, which serves to purge a misrepresentation and remove it from further consideration pursuant to 9 FAM 40.63.

Counsel further cites *Matter of Y-G*, 20 I&A Dec. 794 (BIA 1994), which states that the factual basis for a possible finding of excludability under the first clause of section 212(a)(19) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(19) (1982), relating to fraud or misrepresentation in the procurement of documents, will be closely scrutinized since such a finding may perpetually bar an alien from admission. This case further found that an applicant for admission to the United States is not excludable under section 212(a)(6)(C)(i) if the Act as an alien who seeks or has sought to

procure entry into the United States by fraud or the willful misrepresentation of a material fact where there is inadequate evidence that applicant presented or intended to present fraudulent documents to a United States Government official in an attempt to enter on those documents.

Counsel also refers to the definition of a timely retractions as found in the Foreign Affiars Manual (FAM), which offers guidance regarding section 212(a)(6)(C) of the Immigration and Nationality Act (Act or INA). 9 FAM 40.63 N4.6¹ specifies that:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. If the misrepresentation has been noted in a "mail-order" application, the applicant must be called in for an interview and the retraction must be made during the course thereof. For this reason, aliens shall be warned of the penalty imposed by INA 212(a)(6)(C)(i) at the outset of every initial interview.

The issue in this case is whether the record supports counsel's assertion that the applicant made a timely retraction of her fraudulent Guatemalan passport after she arrived in the United States. In this case, the record supports counsel's assertion that the applicant did make a timely retraction.

The record reflects that the applicant and her daughter arrived on a flight from Mexico at the Miami International Airport on October 10, 1999 and that they were encountered by members of the Terrorist, Drugs and Fraud (TDF) team while exiting the plane. A memo in the record states that the applicant presented two fraudulent Guatemalan passports to the TDF team and that while she was presenting them she stated that she and her daughter were Cuban nationals and that the passports were not legitimately issued to them. She stated that she was entering the United States with the intent of residing in the United States. *Memo for Expedited Removal Unit at the Miami International Airport*, undated.

The record reflects that members of the TDF team were the first government officials the applicant encountered. The record also indicates that the applicant made these officials aware of her actual nationality and did not attempt to misrepresent that nationality. The record further indicates that the applicant consistently stated both that she was a Cuban national and that the passports in her possession were not genuine, to subsequent immigration officials. *Form I-877, Record of Sworn Statement*, dated October 11, 1999.

In her affidavit submitted on appeal of the denial of her Form I-601 application, the applicant also states that in 1999 she immediately informed immigration officials that she was a Cuban national upon her first encounter with those officials. She states that she never intended to commit fraud

¹ <http://www.state.gov/documents/organization/87011.pdf> Accessed March 23, 2009.

against the United States Government and states that she was issued parole to enter to the United States. *Extreme hardship affidavit from the applicant.* A Form I-94 card supports this last assertion, indicating that the applicant was paroled into the United States on October 11, 1999.

The record supports counsel's assertion that though the applicant was in possession of fraudulent passports and though she was aware that these documents were fraudulent, she informed an immigration official that these documents were fraudulent at the first possible opportunity and at no time did she attempt to misrepresent her identity to a United States government official. Therefore, pursuant to 9 FAM 40.63 N4.6, the applicant timely retracted her misrepresentation, which serves to remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility.

Therefore, based on the record, the AAO finds that the applicant did not misrepresent a material fact and is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

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 is not required to file for a waiver of inadmissibility. Accordingly, the appeal will be dismissed as the waiver application is moot.

ORDER: The appeal is dismissed as the waiver application is moot. The district director shall reopen the applicant's Form I-485 for action consistent with this decision.