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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: [REDACTED]

Office: LOS ANGELES, CA

Date: **APR 13 2009**

IN RE: Applicant: [REDACTED]

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:
[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.

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 or reopen, 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 District Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted, and the prior decisions will be affirmed.

The record reveals that the applicant, a native and citizen of Mexico, presented fraudulent documents and provided false information when applying for permanent residency in August 1989. The applicant was thus 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 numerous immigration benefits, including work authorization, advance parole and permanent residency, by fraud and/or willful misrepresentation. The applicant 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 U.S. citizen spouse and children, born in 1993, 1995 and 1997.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 3, 2004.

On appeal, the AAO concurred with the district director that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, and moreover, determined that extreme hardship to a qualifying relative had not been established, as required by section 212(i) of the Act. Consequently, the appeal was dismissed.

Counsel for the applicant has filed a motion to reconsider, requesting reconsideration with respect to the issue of whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation. In support of the motion to reconsider, counsel for the applicant has submitted a brief, dated November 22, 2006. 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 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 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...

With respect to the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act because she previously attempted to procure numerous immigration benefits by presenting fraudulent documents and providing false information to an immigration officer, counsel contends that the applicant did not intend to defraud the government. As stated by counsel:

In May of 1989, an immigration consultant filed an application for permanent residence on applicant's behalf. Unbeknownst to applicant, the consultant made a claim of eligibility based on Section 249 of the Act...which requires entry prior to January 1, 1972. In the application for permanent residence, the consultant listed 1971 as applicant's date of entry into the United States, and submitted fraudulent documents on applicant's behalf. Applicant did not know that the consultant misrepresented her date of entry, nor did she know about the submitted documents, particularly since applicant herself had never provided the consultant with any documents to supplement her application.

Brief in Support of Motion to Reconsider, dated November 22, 2006.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

DOS Foreign Affairs Manual, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain numerous immigration benefits by fraud and/or misrepresentation. The AAO notes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The

unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the record indicates, the applicant signed her name, under penalty of perjury, on numerous immigration forms, including the Form I-485, where she indicated that she had entered the United States in 1971, and the Form G-325A, Biographic Information, where she listed, in detail, her past residences and/or employment since September 1971. It has not been established, despite counsel's assertions to the contrary, that her signatures on said forms were not deliberate and voluntary. Moreover, documentation was presented that was blatantly false.

The applicant had the duty and the responsibility to review the forms (and obtain translations if any questions on the forms were not clear to her) prior to signing, and the compiled documentation prior to its submission.¹ As such, the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C) of the Act .

As determined by the AAO in its decision denying the appeal, dated October 25, 2006, the record does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is removed. On motion, counsel has not provided any additional evidence to support extreme hardship to a qualifying relative were the applicant removed from the United States. As such, the issue of whether the applicant has established extreme hardship to a qualifying relative for purposes of a waiver of inadmissibility will not be addressed in the instant motion to reconsider.

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. 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 motion is granted. The denial of the waiver application will be affirmed.

¹ The applicant's own relative, her aunt, wrote a letter confirming that the applicant had been in the United States since 1971. See *Letter from* [REDACTED] and [REDACTED] dated August 25, 1989. It has not been established that the applicant did not play a role in obtaining such documentation for the immigration consultant since presumably, the immigration consultant would not have known who to contact on her behalf were it not for the applicant's involvement in compiling the documentation for the Form I-485 submission.