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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: BALTIMORE

Date:

APR 23 2009

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:



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 Acting District Director for Services (district director) Baltimore, 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 district director for continued processing.

The applicant is a native and citizen of Somalia 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), in order to remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 7, 2003.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, undated.

The record contains a brief from counsel in support of the appeal; reports on conditions in Somalia; a statement from the applicant's husband; a copy of the applicant's husband's naturalization certificate; copies of tax records for the applicant and her husband; a copy of the applicant's marriage certificate; a copy of the applicant's daughter's birth certificate; documentation in connection with the applicant's applications for Temporary Protected Status, and; documentation in connection with the applicant's entry to the United States. 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 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). Specifically, in connection with the applicant's Form I-485 application to adjust her status to permanent resident, the district director issued a notice of intent to deny the application, stating the following:

On November 6, 2001, an officer of [U.S. Citizenship and Immigration Services] interviewed you regarding your application for adjustment of status. During that interview you testified under oath that you had gained entry into the United States by use of a false passport on November 21, 1992. Based on this misrepresentation, you are found inadmissible under Section 212(a)(6)(C) of the Act.

Notice of Intent to Deny Form I-485 Application, dated March 15, 2002. Upon review, the AAO observes that an interviewing officer hand-noted on the applicant's Form I-485 application that she entered the United States with a false passport. However, the record does not contain a sworn statement from the applicant in which she indicates that she entered the United States using a fraudulent travel document, or otherwise utilizing fraud or misrepresentation.

The record does contain a Form I-215W, Record of Sworn Statement in Affidavit Form, that documents an interview with the applicant upon her attempted entry to the United States on November 21, 1992. The applicant indicated that she paid a man \$6,000 to facilitate her entry to the United States, and that he helped her board a plane. However, the applicant testified that she did not have a passport. The record clearly indicates that the applicant did not possess a passport or valid travel document to enter the United States, yet it does not show that the applicant presented fraudulent documents. Nor does the record show that the applicant misrepresented her identity or her true purpose in seeking entry to the United States at any time. The applicant stated that she was seeking asylum, and although asylum was ultimately denied, she was afforded temporary protected status.

In a memo to the file, also dated November 21, 1992, an immigration inspector and supervisor indicated that the applicant "disembarked from [her] flight not in possession of travel documents namely passport and visa." *Memo to File*, dated November 21, 1992. Thus, the record clearly shows that the applicant did not present a fraudulent passport to U.S. immigration officers in attempt to gain entry or another benefit under the Act. It is noted that the inspecting officer found the applicant inadmissible under sections 212(a)(7)(A)(i)(I), (B)(i)(I) and (B)(i)(II) of the Act for being an intending immigrant without proper documentation. *Id.* The inspecting officer did not find that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for committing fraud or misrepresentation. *Id.*

The AAO finds that detailed, contemporaneous records of the facts of the applicant's arrival to the United States, including her sworn testimony, are the best evidence of her actions on November 21, 1992. The interviewing officer's brief note entered on the applicant's Form I-485 application on November 6, 2001 does not overcome clear evidence of the applicant's true manner of entry on November 21, 1992.

It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961); *Matter of Y-G-*, 20 I&N Dec. 794(BIA 1994). There is no indication in the record that the applicant ever presented fraudulent documents or misrepresented a material fact to an authorized official of the United States Government.

In light of the foregoing, the record does not support that the applicant committed fraud or misrepresentation, such that she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The record contains no indication that the applicant is inadmissible based on alternate grounds. Thus, the applicant does not require a waiver under section 212(i) of the Act, and her Form I-601 application will be declared moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.