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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
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Services



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FILE:



Office: NEWARK, NEW JERSEY

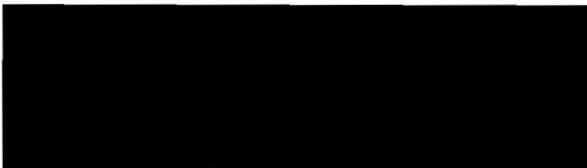
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(d)(11)

ON BEHALF OF PETITIONER:



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 District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was admitted to the United States on February 17, 1999 as a B2 visitor. She was found to be inadmissible under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having aided and abetted another alien to enter the United States in violation of the law, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented a material fact at the time of her application for adjustment of status. The applicant is married to a U.S. Citizen and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The district director concluded that the applicant was statutorily ineligible for a waiver under section 212(d)(11) of the Act because she is not a permanent resident and such a waiver is otherwise only available for individuals who assisted a spouse, parent, son or daughter to enter the United States illegally. The waiver application was denied accordingly. *See Decision of the District Director* dated October 13, 2006. The district director further concluded that the applicant had not established that she qualified for a waiver under section 212(i) of the Act because she had not demonstrated extreme hardship to a qualifying relative if the waiver application were denied.

On appeal counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred and abused its discretion in requiring the applicant to request a waiver of inadmissibility because there was no evidence that she had been involved in any fraudulent activities while working for a travel agency in Colombia. Counsel states that the applicant has denied participating in these activities and contends that USCIS has failed to substantiate the allegations against the applicant. *See Notice of Appeal to the AAO* (Form I-290B).

Section 212(a)(6)(E) of the Act provides in pertinent part:

(E) Smugglers.-

(i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act provides, in pertinent part:

....

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) . . . in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that on September 1, 1999, the U.S. Consulate in Bogota, Colombia found the applicant to be inadmissible under section 212(a)(6)(E) of the Act because she had written fraudulent letters of employment to assist individuals to obtain visas. This finding resulted from an investigation conducted by the U.S. Consulate concerning the February 1999 visa application of an individual presenting an employment letter from the travel agency where the applicant was employed. After contacting the travel agency concerning the letter, the agency determined that the applicant had provided the fraudulent letter to a personal friend who was never employed there, and as a result immediately terminated the employment of the applicant. A copy of the letter of termination dated February 11, 1999 was submitted by the applicant's former employer to the U.S. Consulate. The applicant traveled to the United States six days after her employment was terminated.

The applicant seeks a waiver of inadmissibility under section 212(i) of the Act for having failed to disclose the fact that she had encouraged, induced, assisted, aided or abetted an individual to enter the United States illegally on her application for adjustment of status. There is no indication on the record that the individual whom the applicant assisted in attempting to enter the United States illegally was her spouse, parent, son, or daughter, or that she otherwise qualifies for the exception in section 212(a)(6)(E)(ii) of the Act. Further, section 212(d)(11) provides for a waiver of inadmissibility only for an alien who assists or abets his or her spouse, parent, son, or daughter to enter the United States illegally. The applicant is therefore inadmissible under section 212(a)(6)(E)(i) of the Act and is statutorily ineligible for a waiver of inadmissibility under section 212(d)(11) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established that a waiver would assure family unity, be warranted for humanitarian purposes, or serve the public interest, or whether the applicant merits the waiver as a matter of discretion. Further, no purpose would be served in discussing whether the applicant is

inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation or would qualify for a waiver under section 212(i) if the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(d)(11) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.