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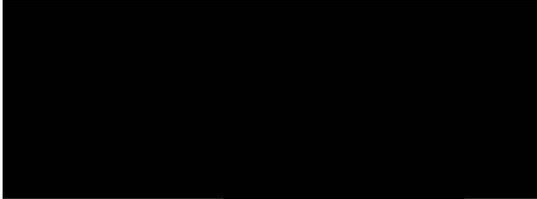
U.S. Department of Homeland Security
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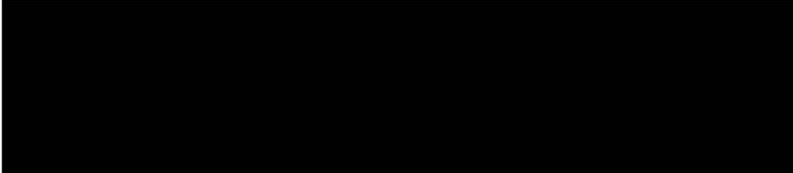
Office: BALTIMORE, MD

Date: FEB 13 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not establish that the applicant is 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 applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring or seeking to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 his spouse and children.

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. *See Decision of the District Director* dated March 27, 2006.

On appeal, counsel asserts that the applicant's misrepresentation was not material and that the applicant relied in good faith on the authenticity of a birth certificate obtained for him by his father. *Counsel's Letter in Support of Appeal* dated April 7, 2005, at 2. Counsel further asserts that the applicant's wife would suffer extreme hardship if he is removed from the United States because of their son's medical condition and the financial hardship that would result from loss of the applicant's income, the family's sole source of support. *Id.* at 2-3. In support of the waiver application and appeal counsel submitted the following documentation: affidavits from the applicant and his wife, birth certificates of the applicant's wife and children, a medical report for the applicant's son, a letter from Children's National Medical Center concerning the applicant's son, medical records concerning the applicant, affidavits from the applicant's parents and other individuals in Pakistan attesting to his date and place of birth, a birth record issued by the Embassy of Pakistan in Washington, D.C., a certificate indicating that no record of the applicant's birth is maintained by the Metropolitan Corporation Lahore, and a copy of the applicant's passport. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States as a B1 visitor on May 20, 1992 with authorization to remain until June 20, 1992. He later applied for asylum and then on April 10, 1996 submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) based on a Petition for Alien Relative submitted by the applicant's former wife. That application was denied after an investigation by the U.S. Immigration and Naturalization Service in Karachi, Pakistan determined that a birth certificate submitted by the applicant was found to be "bogus" by officials in Lahore, Pakistan. *See Notice of Intent to Deny I-485 Application* dated August 4, 1997. The applicant was later found to be inadmissible under section 212(a)(6)(C)(i) of the Act for submitting the false birth certificate and for failing to admit that he had previously sought an immigration benefit through fraud or misrepresentation when applying for adjustment of status in 2003. *See Decision of the District Director* dated March 27, 2006.

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

- (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.

Counsel asserts that the applicant did not knowingly submit a false birth certificate, which was obtained by the applicant's father and contained the applicant's correct name and date of birth. *Counsel's Letter in Support of Appeal* dated April 7, 2005, at 2. Counsel further states that the applicant never misrepresented a material fact because the applicant was born on the date given on the birth certificate and had no reason to question the document's authenticity. *Id.*

In the present case there is no evidence that the applicant misrepresented a material fact or fraudulently sought to procure an immigration benefit because the information on the false birth certificate concerning his identity was correct and did not relate to his eligibility to adjust his status based on marriage to a U.S. Citizen. *See Kungys v. United States*, 485 U.S. 759 (1988)(stating that to support a finding that misrepresentation of an applicant's identity is material, it must be determined whether this concealment had "a natural tendency to influence the decision."). The applicant did not provide false information or conceal his identity, but presented a false document containing his correct identifying information. This document was not submitted to satisfy any specific requirement under the Act to obtain an immigration benefit, as the applicant's eligibility for adjustment of status was not dependent on the information contained in his birth certificate, including his name, parents' names, or date and place of birth, but rather whether he had entered into a bona fide marriage to a U.S. Citizen and was otherwise admissible.

Based on the record, the AAO finds that the applicant, in providing a false birth certificate containing his correct identity information in connection with an application for adjustment of status based on his marriage to a U.S. Citizen, did not commit fraud or misrepresent a material fact for immigration purposes 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 the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn, and the application for a waiver of inadmissibility is declared moot. The director shall reopen the denial of the I-485 application on Service motion and continue processing the application for adjustment of status.