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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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JAN 12 2009

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

[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).

*Michael Shumway*

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center, 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 waiver application is therefore moot. The matter will be returned to the director for further processing consistent with this decision.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure a visa and admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a legal permanent resident and she 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.

The 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.

On appeal, counsel asserts that because the applicant and her citizen spouse have been married for 31 years and have not previously been separated, separation at this time would result in extreme hardship to him. Counsel also provided a statement from the applicant's citizen spouse to the same effect, but submitted no additional evidence or argument.

The record reflects that, on December 29, 1979, the applicant was apprehended in San Luis, Arizona and charged with entering the United States without inspection. When arrested she misrepresented herself as a Mexican citizen, rather than Salvadoran, and used a false name. As a result of these misrepresentations, the director found the applicant inadmissible under section 212(a)(6)(C) of the Act.

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.

In *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961), the Board of Immigration Appeals defined the elements of a material misrepresentation, as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well result in proper determination that he be excluded.

9 I&N Dec. at 448-449. Based on this standard, the applicant's misrepresentations were not material.

Although counsel did not raise the issue, this matter turns on whether the applicant's misrepresentations were made to obtain a visa, other documentation, or admission to the United States, and whether they were material to her eligibility for such a benefit. This office notes that the applicant's use of a false name and her misrepresentation of her citizenship as Mexican rather than Salvadoran had no impact on her eligibility to enter the United States on December 29, 1979. The record contains no evidence that the applicant presented a visa or other valid entry document, and there is no indication that, had the Border Patrol been deceived by her false name and her false claim to Mexican citizenship, they would then have allowed her to enter the United States. Her name and her Salvadoran, rather than Mexican, citizenship were therefore not material facts within the meaning of section 212(a)(6)(C) of the Act.

Based on the record, the AAO finds that the applicant did not misrepresent a material fact to procure a visa, other documentation, admission into the United States, or any other benefit provided under the Act, and that she is not inadmissible under section 212(a)(6)(C) 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 inadmissible and is therefore not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the denial of the Form I-485 application on motion and continue to process the application.