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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

JAN 27 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:

SELF-REPRESENTED

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).

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 Acting District Director (“district director”), Chicago, Illinois 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 Poland 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 21, 2006.

On appeal, the applicant contends that she did not commit fraud or misrepresentation, thus she is not inadmissible and she does not require a waiver. *Statement from Applicant on Appeal*, submitted May 24, 2006.

The record contains statements from the applicant; a copy of the applicant’s birth certificate; a psychological evaluation of the applicant and her husband; statements from applicant’s prior counsel; a statement from the applicant’s husband; a copy of the applicant’s passport, including her F-1 visa; copies of Forms I-94 submitted by the applicant; financial documents for the applicant and her husband; a copy of the applicant’s husband’s birth certificate; a copy of the applicant’s marriage certificate; a statement from the applicant’s father, and; copies of photographs of the applicant and her husband. 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 filed a Form I-485 application to adjust her status to permanent resident on January 28, 2003, based on an approved Form I-130 relative petition filed by her husband on her behalf. At an interview in connection with her Form I-485 application, she presented a Form I-94 departure record that indicated that she entered the United States as a refugee on May 17, 1993. U.S. Citizenship and Immigration Services (“USCIS”) officers determined that the Form I-94 contained a fraudulent refugee stamp. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for attempting to gain a benefit under the Act by fraud or misrepresentation.

On August 18, 2005, the applicant’s prior counsel filed the present Form I-601 application for a waiver. In her accompanying correspondence, counsel stated that the applicant acquired a fraudulent passport and used it to enter the United States. *Statement from Prior Counsel*, dated August 18, 2005. Counsel did not reference the fraudulent Form I-94 presented at the applicant’s adjustment interview. *See id.*

On appeal, the applicant asserts that she did not commit fraud or misrepresentation, thus she is not inadmissible and she does not require a waiver. *Statement from Applicant on Appeal* at 1. The applicant explained that she entered the United States as and F-1 student using a valid passport and lawfully issued F-1 visa. *Id.* The applicant contends that the statement made by her prior counsel that she acquired a fraudulent passport and used it to enter the United States is false. *Id.* at 2. She states that she had no knowledge that the Form I-94 she presented at her adjustment interview had been altered. *Id.* at 1. The applicant contends that, as she did not acquire or use a fraudulent passport, and she did not willfully present a fraudulent Form I-94 at her adjustment interview, she did not commit fraud or misrepresentation. *Id.* at 1-2.

Upon review, the record does not support that the applicant committed fraud or misrepresentation that is material to her eligibility to adjust her status to permanent resident. The record does not show that the applicant acquired or used a fraudulent passport. The applicant was instructed to submit the present Form I-601 application for a waiver due to the presentation of a fraudulent Form I-94 at her adjustment interview, not due to a finding that she acquired or used a fraudulent passport. Nothing in the record suggests that the applicant’s passport was fraudulent. The passport contains an F-1 visa issued by the U.S. Embassy in Warsaw, Poland that appears to be valid. The passport contains an entry stamp that is congruent with the Form I-94 departure record issued upon her entry in F-1 status on July 9, 1992. Thus, the AAO finds it reasonable that counsel’s statement that the applicant acquired and used a fraudulent passport was in error. This finding is supported by the fact that counsel failed to reference the true reason USCIS instructed the applicant to file the present Form I-601 application, namely to attempt to waive her inadmissibility for submitting a fraudulent Form I-94. Accordingly, the applicant has shown by a preponderance of the evidence that she did not acquire a fraudulent passport or use it to enter the United States.

The applicant claims that she had no knowledge that the Form I-94 she presented at her adjustment interview contained a fraudulent refugee admission stamp. However, the record clearly shows that the Form I-94 was in fact fraudulent. The applicant now submits a copy of a Form I-94 departure record showing that she entered the United States in F-1 status on July 9, 1992. The record supports that the July 9, 1992 Form I-94 is a valid and lawfully issued document. The applicant has not clearly explained why she did not provide the July 9, 1992 Form I-94 at her adjustment interview

instead of the Form I-94 with a fraudulent refugee stamp. The applicant has not indicated whether she physically presented the fraudulent Form I-94, or whether the document was given to USCIS by her prior counsel. Accordingly, the applicant has not established that she should not be accountable for presenting the fraudulent Form I-94. Thus, the record shows by a preponderance of the evidence that the applicant did commit fraud and misrepresented her manner of entry to the United States.

However, in order for willful fraud or misrepresentation to lead to inadmissibility under section 212(a)(6)(C)(i) of the Act, it must be shown that the applicant would be inadmissible based on the truth, or that the misrepresentation cut off a material line of inquiry that has a bearing on the applicant's eligibility or admissibility. *See Matter of S- and B- C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961). In the present matter, the record does not show that the applicant would have been inadmissible or ineligible had she revealed that she did not enter as a refugee. As noted above, the applicant has provided sufficient evidence to show that she entered the United States as an F-1 student, using a valid passport and lawfully issued F-1 visa. It is observed that a psychological evaluation of the applicant and her husband notes that the applicant entered the United States in July 1992 pursuant to a student exchange program, and that she completed two years of college here. *Report from Neal Kirschenbaum*, dated September 9, 2005. Thus, the record supports that she entered the United States by lawful means, and the fraudulent Form I-94 did not conceal facts that have a bearing on the applicant's eligibility or admissibility. It is further noted that the applicant indicated on her Form I-485 application that she entered on July 9, 1992 pursuant to a Form I-94 departure record number that is consistent with her valid F-1 Form I-94. Thus, the applicant provided USCIS officers with sufficient information regarding her true manner of entry such that a related line of inquiry could be pursued.

Based on the foregoing, the AAO finds that the applicant's act of fraud and misrepresentation by presenting the fraudulent Form I-94 departure record was not material. Accordingly, she is not inadmissible under section 212(a)(6)(C)(i) of the Act, and she does not require a waiver under section 212(i)(1) of the Act.

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.