



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 01 2009

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 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.

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 relevant waiver application is therefore moot.

The applicant is a native of El Salvador and citizen of Canada 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 parent of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative filed by her son. She 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 with her children.

The service center director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act because of a fraudulent attempt to obtain an immigrant visa “by being the beneficiary of a petition” filed by her mother to classify her as the unmarried daughter of a Permanent Resident. *See Notice of Intent to Deny Form I-485* dated February 26, 2007. The service center director concluded that the applicant was statutorily ineligible for a waiver because she did not have a U.S. Citizen or Lawful Permanent Resident spouse or parent and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Service Center Director*, dated May 3, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) erred in determining that the applicant had willfully misrepresented her marital status in connection to a petition for alien relative filed by her mother on her behalf. *See Counsel’s Brief in Support of the Appeal* at 1. Counsel further asserts that even if the applicant were required to seek a waiver of inadmissibility, she would be eligible to apply for a waiver under section 237(a)(1)(H) of the Act because it would waive inadmissibility as well as removability for fraud or misrepresentation. *Brief* at 1.

The record reflects that the applicant is a fifty year-old native of El Salvador and citizen of Canada who has resided in the United States since August 2005. In April 2001, the applicant’s mother, a Lawful Permanent Resident, filed a Petition for Alien Relative on the applicant’s behalf indicating that she had never been married. At the time the petition was filed, the applicant was separated from her husband and had filed for divorce in British Columbia, Canada, but she was not divorced until May 2002. *See Affidavit of [REDACTED] and Order from the Supreme Court of British Columbia* dated May 6, 2002. The applicant never applied for an immigrant visa or adjustment of status based on the petition filed by her mother, who is now deceased.

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 it was not the applicant, but the applicant's mother, who made a misrepresentation when she submitted the Petition for Alien Relative on the applicant's behalf, and the applicant had no knowledge of the information contained on the petition. *Brief at 2-3*. The applicant further states that she was told that her mother was filing a petition on her behalf along with petitions for several of her siblings, but that she never saw the petition. *See Affidavit of [REDACTED]* dated May 31, 2007. She further states that she believed her mother was under the mistaken impression that she was divorced because she was separated from her husband and had filed for divorce. *Id.*

Counsel relies on the Department of State Foreign Affairs Manual (FAM), which offers interpretations regarding the statutory reference to misrepresentations under section 212(a)(6)(C) of the Act, to support the assertion that the applicant made no willful misrepresentation in connection with the petition filed on her behalf. A misrepresentation is defined as "an assertion or manifestation not in accordance with the facts. Misrepresentation requires an affirmative act taken by the alien." 9 FAM 40.63 N4.1. The term "willfully" is interpreted to mean "knowingly and intentionally as distinguished from accidentally." 9 FAM 40.63 N5.1.

In the present case, the misrepresentation of the applicant's marital status was made in a petition signed and submitted by the applicant's mother, and the applicant never filed an application for an immigration benefit based on the petition or otherwise took action in relation to the petition. The applicant never committed any affirmative act and there is no indication that she was aware of the information contained in the petition. If any willful misrepresentation was made, it was made by the applicant's mother and not the applicant.

Based on the record, the AAO finds that the applicant did not herself make any misrepresentation of her marital status to a government official in connection to the Petition for Alien Relative filed on her behalf. She is therefore 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 application. 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.