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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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FILE:

Office: ST. PAUL, MN

Date: JUN 17 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.

John F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, St. Paul, Minnesota. 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 Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for procuring admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen, she claims to be a daughter of a U.S. citizen 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 field office director concluded that the applicant had 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 Field Office District Director*, at 5-6, dated September 3, 2008.

On appeal, counsel asserts that the applicant does not know if a fake passport was used for her to enter the United States and that the applicant's spouse does not concede that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. *Brief in Support of Appeal*, at 3, 5, dated October 22, 2008. Counsel also asserts that the field office director disregarded the applicant's spouse's hardship and disregarded all of the evidence related to the applicant's mother. *Form I-290B*, at 2, received September 30, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, financial records, information on different medications, country conditions information on Ghana and letters of support. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 denial letter states:

...You entered the United States through San Ysidro, California Port of Entry in February 1999...Fred had passports for you and Adwoa that he presented for you to enter the United States...You knew the passports did not belong to you...the officer spoke with you...while you were sitting in the car...you were allowed to enter the United States.

*Decision of the Field District Director, at 2.*

However, the record does not include a sworn statement from the applicant, any other statement or admission by the applicant, or notes from the interviewing officer at the applicant's adjustment interview that reflect that the applicant was aware that the passport presented to immigration inspectors at the San Ysidro port of entry did not belong to her or that she was directly questioned by an immigration officer at that time. The record does not include a copy of the passport that the applicant used to enter the United States. Therefore, the record does not include an evidentiary basis on which to make a finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, as discussed in *INS v. Elias-Zacarias*, 502 U.S. 478 (1992). If there is no evidence at all that the applicant procured admission by fraud or willful misrepresentation, then the applicant has met her burden that she is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. See *Matter of D-L- and A-M-*, 20 I&N Dec. 409 (BIA 1991).

Based on the record, the AAO finds that the applicant did not misrepresent a material fact and is not inadmissible under section 212(a)(6)(C)(i) of the Act. The waiver 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 the waiver application is moot.

**ORDER:** The appeal is dismissed as the waiver application is moot.