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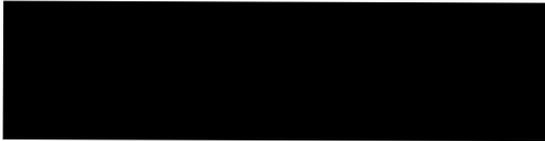
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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JUN 30 2009

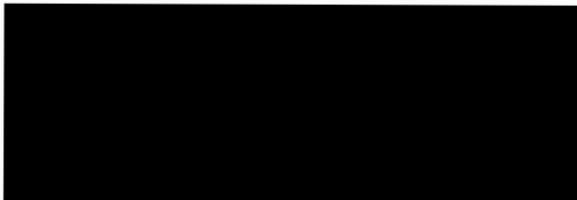
IN RE:



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 District Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not 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, thus, 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and 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 her spouse and their U.S. citizen child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 28, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, the record includes, but is not limited to, a statement from counsel; statements from the applicant; a statement from the applicant's spouse; a statement from the applicant's mother-in-law; a psychological evaluation for the applicant's spouse; medical statements and records for the applicant; a statement from the applicant's church; a statement from the applicant's friend; statements from the employer of the applicant's spouse; copies of paychecks and Forms W-2 for the applicant's spouse; tax statements for the applicant's spouse; mortgage payments; a bank statement; a car insurance policy; and a property tax bill. 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 on April 11, 2002 the applicant was admitted to the United States on a B-2 visa valid until October 11, 2002. *Form I-94, Departure Card*. The applicant has remained in the United States since that time. *Form I-485, Application to Register Permanent Residence or Adjust Status; Form G-325A, Biographic Information sheet, for the applicant*. In May or June 2002 the applicant submitted false documents to obtain a social security card. *Sworn Statement*, dated September 23, 2005. According to the United States Citizenship and Immigration Services (USCIS) official taking her testimony, evidence in the applicant's file indicated that she had submitted a counterfeit H-1B visa and a Form I-94 to the Social Security Administration to obtain a Social Security Card. *Id.* A Customs and Border Protection Memorandum regarding this case verifies that the applicant presented a counterfeit H-1B visa and Form I-94 card in seeking to secure a Social Security Card. *Summary Statement, Customs and Border Protection Memorandum*, dated September 22, 2005. As such, the applicant was found to be inadmissible under section 212(a)(6)(C) of the Immigration and Nationality Act. *Decision of the District Director*, dated July 28, 2006.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Although the applicant presented fraudulent documents to secure a social security card, the fraud or misrepresentation was not made to obtain a specific benefit under the Act, such as a visa, admission to the United States or immigration documents. Therefore, although unlawful, it is not the type of fraud that renders the applicant inadmissible under section 212(a)(6)(C) of the Act. The waiver filed pursuant to sections 212(i) of the Act is therefore moot.

An applicant must demonstrate by a preponderance of the evidence that he is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has met her burden of proof.

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.