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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: DENVER, COLORADO Date: MAR 03 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:

[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, as required by 8 C.F.R. 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record establishes that the applicant was previously granted a waiver under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and the subsequent waiver application is therefore moot.

The applicant is a native and citizen of Mexico who has resided in the United States since September 2002, when she entered with a V1 visa. The applicant 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 previously sought to procure admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. 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 with her spouse and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated August 18, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in requiring the applicant to apply for a waiver and then denying the waiver application after a waiver under section 212(i) of the Act had previously been granted when the applicant applied for a V1 visa in 2002. *See Brief in Support of Appeal* at 2. Counsel cites 8 C.F.R. § 212.7(a)(4) to support the assertion that a waiver is valid indefinitely for acts specified in the waiver application unless it is determined that the initial decision was made in error. *Id.* Counsel further states that the decision of the district director fails to mention the previous waiver or address whether it was granted in error, and this amounts to reversible error. *Brief in Support of Appeal* at 2-3. In support of the appeal, counsel submitted a copy of the applicant's husband's naturalization certificate, a copy of the approval notice for the applicant's I-130 Petition, a letter from the National Visa Center indicating the applicant intended to adjust her status in the United States, a memorandum from the U.S. Department of Justice granting the applicant's application for a waiver under section 212(i) of the Act, a copy of the District Director's decision denying the applicant's waiver application, the applicant's I-485 receipt notice, a Request for Evidence issued by USCIS, and a copy of the applicant's passport indicating she was admitted with a V1 visa. 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:

> (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:

> **(1)** The [Secretary] may, in the discretion of the [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 [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.

In the present case, the record reflects that the applicant is a fifty-seven year-old native and citizen of Mexico who has resided in the United States since 2002, when she entered with a V1 visa. The applicant previously attempted to enter the United States on September 21, 1997 with a fraudulent visa and was removed to Mexico that same date. The applicant's husband is a fifty-nine year-old native of Mexico and citizen of the United States. The applicant and her husband and their children reside in Edwards, Colorado.

Counsel for the applicant asserts that USCIS erred in requiring the applicant to apply for a waiver under section 212(i) of the Act, when such a waiver had already been granted and no finding was made that this previous decision was made in error. A review of the record establishes that the applicant applied for a nonimmigrant V1 visa in Ciudad Juarez, Mexico in 2002. A decision issued by the Officer in Charge of the U.S. Immigration and Naturalization Service (now USCIS) office in Ciudad Juarez indicates that the applicant was found inadmissible for attempting to enter the United States on September 21, 1997 with a counterfeit visa. *See Form I-607* dated August 20, 2002. The decision states that the applicant was granted a waiver under section 212(i) of the Act because "the applicant's exclusion will result in extreme/serious hardship" to her Lawful Permanent Resident husband due to "emotional and financial hardship of family separation" and because of a finding of reformation and rehabilitation. *Id.*

The AAO notes that a waiver under section 212(i).of the Act is not normally required of applicants for nonimmigrant visas. Rather, nonimmigrant visa applicants who are inadmissible under Section 212(a) of the Act may be granted a discretionary waiver under section 212(d)(3)(A) of the Act, 8 U.S.C. § 1182(d)(3)(A), and issued a visa without having to establish hardship to a qualifying relative. Applicants for V nonimmigrant visas are, however, considered to be "de facto immigrants," and, if inadmissible, must therefore also establish eligibility for the waiver of inadmissibility required of applicants for admission as immigrants. *See* Adjudicator's Field Manual, Chapter 37.4(f)(2). The Adjudicator's Field Manual provides,

> [B]ecause the V nonimmigrants, like the K-1 fiancées, are de facto immigrants, the adjudicating officer must also determine if a waiver for the same ineligibility is available for admission as an immigrant. If not, the officer may decide not to approve the 212(d)(3)(A) waiver, and the case could be denied. . . . *See* Adjudicator's Field Manual, Chapter 37.4(f)(2).

In the present case, the record indicates that a waiver under section 212(i) of the Act was granted by the Officer-in-Charge, Ciudad Juarez, Mexico, on August 20, 2002 for the applicant's September 21,

1997 attempt to enter the United States with a counterfeit visa. *See Form I-607* dated August 20, 2002. The District Director therefore committed error in requiring the applicant to submit an application for a waiver of inadmissibility under section 212(i) for the same conduct addressed in the previous waiver application.

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.