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

H2

FILE:

Office: DETROIT

Date:

MAR 11 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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Detroit, 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 of Iraq and citizen of Canada 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 October 13, 2006.

On appeal, counsel for the applicant contends that the applicant did not knowingly commit fraud or misrepresentation, thus he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief from Counsel*, dated December 12, 2006.

The record contains a brief from counsel; statements from the applicant and his wife; a copy of the applicant's marriage certificate; a copy of the applicant's wife's naturalization certificate; copies of birth certificates for the applicant's children; copies of family photographs; a letter from the applicant's wife's employer; verification of the applicant's employment; tax and financial records for the applicant; a copy of the applicant's passport; a statement that the applicant provided at an interview in connection with his application to adjust his status to permanent resident; and documentation regarding the applicant's entries to and exits from the United States. 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 his status to permanent resident, based on an approved Form I-130 relative petition filed by his wife on his behalf. At an interview in connection with his Form I-485 application, the applicant made statements regarding his entry to and departure from the United States. These statements were later determined to be inconsistent with his true entries to and exits from the United States. Thus, it was determined that the applicant made a misrepresentation, and he was found to be inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel contends that the applicant did not knowingly commit fraud or misrepresentation, as he did not fully understand the questions asked in the interview. *Brief from Counsel* at 1. However, the record does not contain sufficient explanation or evidence to show that the applicant misunderstood questions during his interview. Thus, the applicant has not shown by a preponderance of the evidence that he is innocent of making willful misrepresentations.

However, upon review, the record does not support that the applicant committed fraud or misrepresentation that is material to his eligibility to adjust his status to permanent resident. The applicant did not accurately represent his entries to and exits from the United States. However, the true dates of the applicant's entries and exits do not render him inadmissible or otherwise ineligible to adjust his status to permanent resident.

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 he accurately revealed his dates of entry and departure from the United States. It is noted that the district director determined that the applicant was not unlawfully present in the United States for more than six months that may have given rise to inadmissibility under section 212(a)(9)(B) of the Act. Nor does the record show that the applicant entered the United States by unlawful means. The record does not support that the applicant's inaccurate statement cut off a material line of inquiry regarding his admissibility or eligibility. In fact, his inaccurate statement led to further inquiry and a finding of inadmissibility that was determined to be erroneous when the true facts were revealed.

Based on the foregoing, the AAO finds that the applicant's misrepresentation by presenting inaccurate information regarding his entries to and departures from the United States was not material. Accordingly, he is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he 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.