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



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: MOSCOW, RUSSIA Date: **MAR 31 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 APPLICANT:  
[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 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 Acting Officer in Charge (OIC), Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The applicant is a native and citizen of the Ukraine 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 entry into the United States by fraud or willful misrepresentation. On January 30, 2006, the applicant filed a Form I-601, Application for Waiver of Grounds of Excludability, seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States to be with her U.S. citizen spouse.

On December 4, 2006, the OIC issued a decision denying the application for waiver, concluding that the applicant has failed to establish that the refusal to admit the applicant into the United States would impose extreme hardship on a qualifying relative.

The applicant filed a Form I-290B, Notice of Appeal, on December 27, 2006. Counsel for the applicant asserted on appeal that the applicant's inadmissibility would result in extreme hardship to the applicant's spouse, and, furthermore, the applicant merits a favorable exercise of discretion in this waiver application.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant has never entered the United States. Based on the record, at the time of her immigrant visa interview in September 2005, the applicant admitted to knowingly purchasing a false U.S. visa in Lviv, Ukraine. She was intercepted by Polish border guards in Warsaw while attempting to board a flight to the United States using this false visa in April 2000. The OIC determined that the applicant had

committed fraud in an attempt to obtain entry into the United States, and, therefore, is inadmissible under section 212(a)(6)(C)(i) of the Act.

However, it is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). *Matter of Y-G-*, 20 I&N Dec. 794(BIA 1994). Here, the act of fraud or willful misrepresentation in question, *i.e.*, the presentation of a false U.S. visa by the applicant, was made to the Polish authorities and not to an authorized official of the United States Government. Accordingly, the OIC's determination that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act is in error and is hereby withdrawn.

Because the ground for inadmissibility set forth in the OIC's decision is in error and there appears to be no other grounds for inadmissibility in this instance, the AAO finds that the applicant has not been determined to be inadmissible under the Act. Therefore, the applicant's appeal will be dismissed and her application for waiver of inadmissibility will be declared moot.

**ORDER:** The appeal is dismissed as the underlying waiver application is moot. The field office director shall provide a copy of this decision to the U.S. Embassy in Moscow for the continued processing of the applicant's immigrant visa.