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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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FILE:



Office: HONOLULU

Date: **MAY 04 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.

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Honolulu, Hawaii denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. 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 waiver application is therefore moot. The matter will be returned to the district director for further processing consistent with this decision.

The applicant is a native and citizen of Japan, the spouse of a United States citizen, and the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit 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 reside in the United States with her husband.

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.

On appeal, counsel noted that the applicant was not represented at the interview at which she allegedly misrepresented material facts. He further stated that she requested a translator, but none was provided. Counsel also noted that the date upon which the decision of denial stated that the applicant and her husband married was incorrect. Counsel stated that additional evidence or a brief would be provided within 60 days. No further information, argument, or documentation has been received. 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.

The record reflects that in sworn statements taken at interviews on December 7, 2005 pertinent to the Form I-130 petition, the applicant and her husband provided inconsistent testimony.

More specifically, the applicant stated that she and her husband first met at a friend's home. Her husband stated that they met at his own home. The applicant stated that her husband has no children. Her husband stated that he has one child. The applicant stated that they use a brown blanket as a bedspread. Her husband stated that they use a white and blue bedspread. The applicant stated that her husband did not eat breakfast on the morning of the interview. Her husband stated that he had Portuguese sausage and rice for breakfast. The applicant stated that she slept on the left side of the bed. Her husband stated that he slept on the left side of the bed. The applicant stated that she and her husband took a taxicab from their home to the immigration office on the morning of the interview. Her husband stated that he took a taxicab alone from his mother's house to the interview. The two also provided different descriptions of their bedroom furniture. Notwithstanding the

discrepancies in their answers, the Form I-130 petition was approved. For those same discrepancies, however, the district director found the applicant inadmissible pursuant to section 212(a)(6)(C) of the Act.

Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination. The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As to some of the discrepancies, the applicant explained, on December 7, 2005 after she was informed of the inconsistencies, that she had not wished to admit that her husband slept at his mother's house the previous night because she believed that the interviewing officer might then find that the marriage was not *bona fide* and deny the petition. This makes clear that the applicant did, in fact, intentionally misrepresent some facts in seeking an immigration benefit. The remaining question is whether the facts misrepresented were *material within the meaning of section 212(a)(6)(C) of the Act*.

In *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961), the Board of Immigration Appeals stated that a misrepresentation is material if the applicant is excludable based upon the true facts, or if the misrepresentation shut off a line of inquiry relevant to the alien's eligibility, which line of inquiry might well have resulted in a proper determination that the alien should be excluded.

The questions at issue were only relevant to the question of whether the applicant's marriage is *bona fide* for immigration purposes. Whether the applicant slept on the left side of the bed or the right side, or what her husband had for breakfast, were not, *per se*, material facts, but inconsistency between the answers given by the applicant and her spouse could have demonstrated that their marriage is not *bona fide*, a material eligibility factor. USCIS determined, however, upon knowing the true facts, that the marriage is *bona fide* and approved the Form I-130 petition. Further, the record contains no indication that the false answers to questions of limited relevance precluded any line of inquiry. The record does not suggest that further inquiry would have revealed information impacting eligibility. Those questions had no relevance, even indirectly, to any other issue.

Based on the record, the AAO finds that the applicant, in providing false answers at the interview pertinent to the Form I-130 petition, did not commit fraud or misrepresent a material fact for immigration purposes and is not inadmissible under section 212(a)(6)(C) of the Act. The waiver application 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 inadmissible and is therefore not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The director shall reopen the Form I-485 application and continue processing of the application.