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U. S. Citizenship and Immigration Services
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U.S. Citizenship
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MAR 05 2010

FILE:

Office: MEXICO CITY (SANTO DOMINGO)

Date:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(d)(11)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, Mexico, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Trinidad. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting material facts to gain admission into the United States. She was further found inadmissible under section 212(a)(6)(E)(i) of the Act, 8 § 1182(a)(6)(E)(i), for attempting to smuggle her two grandchildren into the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen children and U.S. lawful permanent resident husband.

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's grandchildren resided with her and her husband in Trinidad. Counsel states that the applicant did not know that her grandchildren's parents (her son and daughter-in-law) were residing illegally in the United States. Counsel contends that the applicant had no intention of leaving her grandchildren in the United States. Counsel further asserts that the applicant has established that her U.S. lawful permanent resident husband and U.S. citizen children would suffer extreme hardship if her waiver is denied and she is refused admission to the United States.

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 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.

Section 212(a)(6)(E) of the Act provides:

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .
- (ii) Special rule in the case of family reunification.-Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that on June 6, 1987, the applicant applied for admission to the United States with her B-1/B-2 visitor visa at John F. Kennedy International Airport. The immigration inspector placed the applicant in secondary inspection and took a sworn statement regarding the intent of her visit to the United States. The immigration inspector issued a detailed memorandum to the file regarding the factual basis for his finding of inadmissibility. The memorandum provides the following:

Subject arrived this date via [REDACTED] and presented a valid Trinidadian pp ([REDACTED] containing a B-2/B-1 indefinite visa ([REDACTED]) issued in Port of Spain on 3/23/87. She requested to stay one month to visit a friend, [REDACTED], at the address listed above. She was accompanied by 2 children, [REDACTED] and [REDACTED] who she identified as her grandchildren. Each child had his own passport containing a one-entry B-2 visa. Subject stated that she had no family in the U.S. and was only taking

the children to the U.S. for a vacation. She stated that the children's parents – subject's son, [REDACTED], and his wife, [REDACTED] – were in Trinidad. Subject was carrying a card with [REDACTED] name and U.S. address. [REDACTED] name was written along side. NIIS showed that [REDACTED] (DOB 2/4/61) entered the U.S. on 4/18/87 destined to [REDACTED]. Subject was carrying letters addressed to another son of hers, [REDACTED], who is apparently working in the U.S.

Subject then admitted in a sworn statement that both her sons, [REDACTED] and [REDACTED] were in the U.S. – [REDACTED] for about 1½ months and [REDACTED] for about 1 year 6 months. She stated that she didn't know their status. However, since she initially denied having family in the U.S. and stated on her visa application (see statement) that she had no family in the U.S. at a time when [REDACTED] had been here more than a year, it is likely that he is working illegally. Subject also stated that [REDACTED] wife, [REDACTED] came to the U.S. with him in April.

It appears that subject is bringing the children to join their parents. It also appears that subject obtained her visa by willful misrepresentation of a material fact and is coming to join her son, [REDACTED] who is in the U.S. illegally. She appears to be excludable . . . and was deferred for a hearing on 6/23.

According to the U.S. Department of State's Foreign Affairs Manual, "materiality does not rest on the simple moral premise that the alien has lied, but must be measured pragmatically in the context of individual cases as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa." 9 FAM 40.63 N6.1. The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as "(1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. This test is generally consistent with the prevailing judicial authorities, cited above." 9 I&N Dec. 436, 447 (BIA 1960).

The applicant's sworn statement reflects that when she applied for a visitor visa at the U.S. Embassy in Port of Spain, she did not disclose that her son, [REDACTED], was residing in the United States. Moreover, the record shows that when the applicant applied for her and her grandchildren's admission to the United States, she initially informed the immigration inspector that she did not have family in the United States and her grandchildren's parents ([REDACTED] and [REDACTED]) were in Trinidad. The applicant's failure to disclose this information is material as it shuts off a line of inquiry relevant to her and her grandchildren's nonimmigrant intent to temporarily visit the United States.¹ See *Matter of S- and B-C-*, 9 I&N Dec. 436, 447. Accordingly, the record supports the

¹ B-1/B-2 visas are issued to aliens having residence in a foreign country which they have no intention of abandoning and who are visiting the United States temporarily for business or temporarily for pleasure. Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B).

director's finding that the applicant misrepresented material facts in an attempt to procure her and her grandchildren's admission into the United States. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act on this basis. Further, the applicant's material misrepresentations on behalf of her grandchildren suggest that she was attempting to assist them with entering the United States in violation of law. The applicant's misrepresentations on behalf of her grandchildren trigger a second ground of inadmissibility, section 212(a)(6)(E)(i) of the Act, for alien smuggling. Therefore, the AAO agrees with the director's finding that the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Act.

An exception to the section 212(a)(6)(E) ground of inadmissibility under the "special rule" is available to an eligible immigrant who only aided his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law, prior to May 5, 1988. A section 212(d)(11) of the Act waiver of inadmissibility is dependent upon a showing that the alien (1) only aided an individual who, at the time of the offense, was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law; and (2) the alien either had been admitted to the United States as a lawful permanent resident alien and did not depart the United States under an order of removal, or, is seeking admission as an eligible immigrant.

In the present case, the applicant attempted to smuggle her grandchildren into the United States. The applicant's grandchildren are not qualifying relatives for purposes of a section 212(a)(6)(E)(ii) of the Act "special rule" exception or a section 212(d)(11) of the Act waiver of inadmissibility. The AAO, therefore, finds that the applicant's inadmissibility under section 212(a)(6)(E) cannot be excepted or waived. Since there is no relief available for the applicant's inadmissibility under section 212(a)(6)(E) of the Act, no purpose would be served in adjudicating her application for a waiver under section 212(i) of the Act. Therefore, pursuit of the instant application is moot and the appeal must be dismissed.

ORDER: The appeal is dismissed.