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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



**U.S. Citizenship
and Immigration
Services**

H5

MAY 05 2010

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER
(consolidated therein)

Date:

IN RE:

Applicant:

[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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having entered the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the mother of three¹ U.S. citizen children. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). She 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 children.

The Director determined that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated July 24, 2007. The AAO notes that the Director's decision misstates the waiver ground that applies to the applicant as section 212(h)(1)(B) of the Act, rather than section 212(i).

On appeal, counsel for the applicant asserts that the applicant is not inadmissible to the United States because she was apprehended at an interior checkpoint and never used fraud to gain admission to the United States. *Form I-290B*, filed August 27, 2007.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her daughter, a birth certificate for the applicant's daughter, and marriage and divorce documents for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Act provides, in pertinent part, that:

(i) In general.—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.

(ii) Falsely claiming citizenship.—

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

¹ The AAO notes that the applicant had four United States citizen children but her youngest son died on August 22, 2007.

- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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...

The record establishes that, on July 4, 1990, the applicant, when asked her citizenship, presented a Texas birth registration card belonging to another individual to U.S. Border Patrol officers at an interior checkpoint near Niland, California. *Record of Deportable Alien (Form I-213)*, dated July 4, 1990. During subsequent questioning, the applicant stated that she had also presented the same birth registration card at the Calexico port of entry earlier that day to enter the United States and that she had twice used the same birth registration card to seek admission to the United States illegally. *Sworn Statement*, dated July 4, 1990.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. See sections 212(a)(6)(C)(ii) and (iii) of the Act. However, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 allow aliens in the applicant’s position, i.e., those making false claims to U.S. citizenship prior to September 30, 1996, to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [USCIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [USCIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that an applicant is the spouse or son/daughter of a United States

citizen or lawful permanent resident of the United States. The record in the present case indicates that the applicant's marriage to her U.S. citizen husband ended in divorce on February 9, 2007 and that her parents remain in Cuba. Accordingly, the AAO finds that the record does not establish that the applicant has the qualifying family member required by section 212(i) of the Act. Consequently, the applicant is ineligible for waiver consideration and the appeal must be dismissed.

In proceedings for application for a 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 has not met that burden.

ORDER: The appeal is dismissed.