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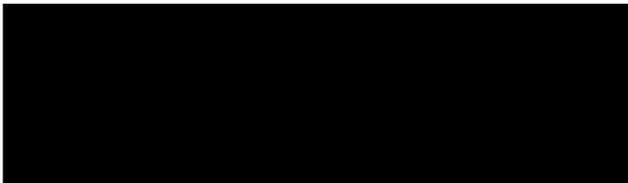
HS

FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 27 2010**

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:



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
for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines 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 procured admission into the United States by fraud or willful misrepresentation. The applicant was further found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for knowingly encouraging, inducing, assisting, abetting, or aiding any other alien to enter or to try to enter the United States in violation of law. The applicant seeks waivers of inadmissibility pursuant to sections 212(d)(11) and 212(i) of the Act, 8 U.S.C. §§ 1182(d)(11) and (i), in order to reside in the United States as a lawful permanent resident.

The field office director concluded that the Act does not provide a waiver of inadmissibility under section 212(a)(6)(E), and thus the applicant's inadmissibility may not be waived. *Decision of the Field Office Director*, dated December 10, 2007.

On appeal, counsel for the applicant contends that the applicant was unaware that her and her son's visas and passports were not legitimately obtained, as she hired a travel services agency to provide them. *Brief from Counsel*, dated February 7, 2008. Counsel further contends that the applicant's U.S. citizen parents will endure extreme hardship if the present waiver application is denied. *Id.* at 3-6.

The record contains briefs from counsel; reports on conditions in the Philippines; statements from the applicant, the applicant's son, the applicant's mother, and the applicant's father; copies of the applicant's parents' naturalization certificates; a psychological evaluation for the applicant's parents; copies of medical documents for the applicant's father; a copy of a birth record for the applicant; a copy of the applicant's passport, and; copies of educational documents for the applicant. The entire record was reviewed and considered in rendering this decision.

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

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, in pertinent part, 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 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 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, in pertinent part:

Smugglers.-

- (i) In general.-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 provides, in pertinent part:

The Attorney General (now Secretary of the Department of Homeland Security) 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 shows that on or about August 3, 1993 the applicant and her son entered the United States using visas and passports issued under false names. The applicant testified under oath that she and her son used fraudulent visas and passports, and that she paid an agency in the Philippines to prepare them for her. *Record of Sworn Statement in Administrative Proceedings*, dated December 3, 2007.

Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured admission into the United States by fraud or willful misrepresentation. The applicant was further found to be inadmissible pursuant to section 212(a)(6)(E)(i) of the Act for knowingly assisting her son in entering the United States in violation of law.

On appeal, counsel contends that the passport and visa that the applicant's son used to enter the United States contained his true name. *Brief from Counsel* at 2. Counsel states that the applicant did not know the proper procedures for obtaining a visa, and she believed the agency she used was legitimate. *Id.* Thus, counsel asserts that the applicant did not knowingly assist her son in entering the United States unlawfully. *Id.* at 2-3.

However, the only documentation in the record regarding the applicant's assistance to her son consists of her sworn statement that she provided in her an interview in connection with her application to adjust her status to lawful permanent resident. In the statement, she clearly stated that her son used a false visa and passport, and that the documents were prepared for her by an agency in the Philippines. *Record of Sworn Statement in Administrative Proceedings* at 2. She added that the documents she received for herself from the agency contained a false name, which supports that she was aware that the documents were not lawfully obtained prior to the date she and her son used them to enter the United States. *Id.* at 1. The applicant did not indicate that she was unaware that she was purchasing fraudulent travel documents. Counsel's unsupported statement on appeal is not sufficient to show that the applicant did not knowingly acquire fraudulent travel documents for herself and her son. Therefore, the record supports the director's finding that the applicant willfully misrepresented material facts to procure her and her son's admission into the United States.

As the applicant obtained fraudulent travel documents for her son, and then assisted him in entering the United States using those documents, she knowingly assisted him in entering the United States in violation of law. Accordingly, the applicant was properly found to be inadmissible pursuant to sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Act.

Section 212(d)(11) of the Act provides for a possible waiver of inadmissibility under 212(a)(6)(E)(i) of the Act. However, the applicant does not meet the threshold requirement of section 212(d)(11) of the Act, as she is not an "alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily," or "an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a)." Section 212(d)(11) of the Act. Specifically, the applicant filed her Form I-485 application to adjust her status to lawful permanent resident based on an approved Form I-140, Immigrant Petition for Alien Worker. On Form I-485, Supplement A, at Part B, Item 2, the applicant confirmed that she is "seeking employment-based adjustment of status." Thus, her Form I-485 application is not based on an underlying Form I-130, Petition for Alien Relative.

As the applicant does not meet the requirements for a waiver under section 212(d)(11) of the Act, no purpose would be served by determining whether she is eligible for a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act pursuant to section 212(i) of the Act. Therefore, pursuit of the instant application is moot and the appeal must be dismissed.

In proceedings regarding waivers of grounds of inadmissibility under sections 212(d)(11) and 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.