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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
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H15

FILE: [REDACTED]

Office: LOS ANGELES

Date: OCT 04 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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 remanded for further action as noted below.

The record establishes that the applicant, a native and citizen of China, procured a B1/B2 nonimmigrant visa and entry to the United States in October 1999. The field office director noted that the applicant had "fraudulently obtained your B-1 nonimmigrant visitor's business visa issued on October 6, 1999 in Guangzhou, China. On October 23, 1999 you sought entry into the United States at San Francisco, California by presenting yourself for inspection to an officer of the former Immigration and Naturalization Service... You were then admitted into the United States on a B-1 visitor's business visa..." *Decision of the Field Office Director*, dated April 11, 2008. The field office director thus found the applicant to be inadmissible to the United States pursuant to 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 obtained a B1/B2 nonimmigrant visa and subsequent entry to the United States by fraud or willful misrepresentation. The applicant is applying for 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 U.S. citizen spouse.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 11, 2008.

In support of the appeal, counsel for the applicant submits a brief, dated June 4, 2008, and referenced exhibits. The entire record was reviewed and considered in rendering 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.

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 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...

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, counsel contends that the applicant did not commit any fraud in obtaining a nonimmigrant visa and subsequent admission to the United States and is thus not inadmissible under section 212(a)(6)(C) of the Act. *Brief in Support of Appeal*, dated June 4, 2008.

The Department of State Foreign Affairs Manual [FAM] states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

DOS Foreign Affairs Manual, § 40.63 N2.

The FAM further provides, in pertinent part:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa....

"A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (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 have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

DOS Foreign Affairs Manual, § 40.63 N. 6.1. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

The record establishes that on October 23, 1999, the applicant and her then spouse, [REDACTED] attempted to enter the United States separately, with B1/B2 nonimmigrant visas. The applicant was admitted at primary inspection. *See I-94 Card*, dated October 23, 1999. [REDACTED] was referred to secondary inspection, where he was questioned and his luggage was searched. The investigation found discrepancies with respect to the invitation letter for his B-1 visa and documentation indicating that he was intending to have an H-1B visa filed on his behalf. After her admission, the applicant was contacted by immigration officers and initially denied any relationship to [REDACTED] other than as business co-workers; she finally admitted to being his spouse. *Form I-275, Withdrawal of Application for Admission/Consular Notification for [REDACTED] (Form I-275)*, dated

October 23, 1999. [REDACTED] subsequently withdrew his application for admission and was allowed to return to China. The applicant was allowed to remain in the United States.

After a thorough review of the record, the AAO concludes that the record is inconclusive as to whether the applicant is inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation. While there is information in the record that there was suspicion that her ex-husband procured a visa with fraudulent documents, the record does not establish that the applicant herself procured her visa or subsequent entry to the United States by fraud or willful misrepresentation. The record reflects that the applicant was admitted to the United States on a B1/B2 visa and was allowed to proceed to enter the United States even after speaking to immigration officers with regard to her husband's possible fraud.

As for the fact that the applicant initially denied to the inspector that [REDACTED] was her spouse, the AAO finds that the applicant's failure to disclose her spousal relationship was not a material misrepresentation. She had her own visa which was not found to have been obtained by fraud, and she was not denied admission to the United States after revealing her true relationship.

The field office director's finding of fraud is vague and does not appear to be supported by the record. The record is, therefore, remanded to the field office director for a more thorough examination of the applicant's possible inadmissibility for fraud or misrepresentation. A new decision shall be produced providing a detailed explanation of the fraud committed. The new decision shall be certified to the AAO for review. If after further review the field office director finds that the applicant did not commit fraud or misrepresentation in order to obtain admission to the United States, the applicant shall be found to be admissible and the director shall continue to process the applicant's application for adjustment of status.

ORDER: The matter is remanded to the field office director for further examination of the applicant's inadmissibility as noted above.