

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**

115

[Redacted]

FILE: [Redacted]

Office: ST. PAUL, MN

Date: **OCT 05 2010**

IN RE: [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 PETITIONER:

[Redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Elean C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Vietnam 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 a visa and admission to the United States through fraud or misrepresentation of a material fact. The applicant was the beneficiary of an approved Petition for Alien Relative that was filed by her U.S. Citizen spouse and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States with her spouse.

The field office director concluded that the applicant failed to establish that she qualified for a waiver based on hardship to her U.S. Citizen spouse because he had withdrawn her Petition for Alien Relative and the Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director* dated April 16, 2010.

On appeal counsel for the applicant asserts that the applicant did not willfully misrepresent her marital status on her application for a nonimmigrant visa dated April 13, 2007, but was mistaken when she did not state that she was married to a U.S. Citizen residing in the United States. Counsel further states that because the applicant's husband was filing a new Form I-130, Petition for Alien Relative, the waiver application is still relevant.

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 [Secretary] may, in the discretion of the [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 [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 viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on an application to adjust status that is, in turn, based on an approved Form I-130, Petition for Alien Relative. The Petition for Alien Relative filed on behalf of the applicant was approved, and the approval was subsequently revoked on April 16, 2010 after the applicant's husband withdrew the petition.

The applicant is no longer eligible for adjustment of status because the underlying Petition for Alien Relative was revoked, and her Application to Register Permanent Residence or Adjust Status (Form I-485) was denied on April 16, 2010 based on the revocation of the underlying petition. Further, a subsequent Petition for Alien Relative filed for the applicant was also denied on September 21, 2010, and the applicant is currently not eligible to apply for adjustment of status. As she is not eligible to apply for adjustment of status, there is no need to adjudicate the Form I-601 waiver of inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.