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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



#5

FILE:

Office:

Date: APR 07 2011

IN RE: Applicant:

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.

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 \$630. 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.

Thank you,

Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, [REDACTED]. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of [REDACTED] was found 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 procured an immigrant visa and subsequent admission 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 remain in the United States with his U.S. citizen mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 22, 2008.

On appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal, and referenced documentation.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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.

With respect to the district director's finding of inadmissibility under section 212(a)(6)(C) of the Act, the record indicates that the applicant's mother filed a Form I-130, Petition for Alien Relative (Form I-130) in August 1991 on behalf of the applicant, as the unmarried child of a lawful permanent resident. The Form I-130 was approved in November 1991. In 1998, the applicant submitted the immigrant visa application and declared that he was unmarried. *See Application for Immigrant Visa and Alien Registration*, dated May 29, 2008. The applicant also signed the Statement of Marriageable Age Applicant, confirming that he understood that he would lose his special, immediate relative or preference status or right to benefit from the immigration status of a

parent if he were to marry prior to his application for admission at a port of entry. *See Statement of Marriageable Age Applicant*, dated June 11, 1998. In April 1999, the applicant applied for admission at a port of entry and was granted lawful permanent resident status under the classification F24-Unmarried Son or Daughter of Permanent Resident

In September 2004, the applicant submitted Form N-400, Application for Naturalization (Form N-400). On said form, the applicant disclosed that he had been married since December 1994. On May 9, 2005, the applicant provided sworn testimony confirming that he had been married since December 10, 1994, to [REDACTED] and had two children. *Record of Sworn Statement*, dated May 9, 2005. Based on these disclosures, a Notice of Appear was issued to the applicant, stating that the applicant had deliberately misrepresented his marital status as single when in fact he was married, and further noting that the Form I-130 visa petition filed and approved on his behalf was automatically revoked, pursuant to 8 CFR 205.1(a)(3)(i)(I), as of the date of approval once he was married. *See Notice to Appear*, dated June 3, 2005.

Section 205.1 of Title 8 of the Code of Federal Regulations states, in pertinent part:

(a) Reasons for automatic revocation. The approval of a petition...made under section 204 of the Act...is revoked as of the date of approval:

(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:

(i) Immediate relative and family-sponsored petitions....

(I) Upon the marriage of a person accorded status as a son or daughter of a lawful permanent resident alien under section 203(a)(2) of the Act.

The Form I-130 petition submitted by the applicant's mother has been automatically revoked due to the applicant's marriage prior to his admission to the United States. The viability of the Form I-601 is dependent on an adjustment of status application that is, in turn, based on an approved Form I-130. In the absence of an approved Form I-130¹, the Form I-601 is moot. The appeal of the denial of the waiver must therefore be dismissed as moot.

ORDER: The appeal is dismissed.

¹ On February 17, 2011, the AAO remanded the matter to the district director to determine if another valid immigrant petition on behalf of the applicant had been approved. *See Decision of the AAO*, dated February 17, 2011. On March 2, 2011, such evidence was requested. *See Request for Evidence*, dated March 2, 2011. In response, a copy of the previously revoked Form I-130 filed on the applicant's behalf by his mother in August 1991 was submitted.