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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

[REDACTED]

H5

FILE:

[REDACTED]

Office: SANTA ANA

Date:

APR 13 2011

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 APPLICANT:

[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 \$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,

*Michael Shumway*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the Field Office Director, Santa Ana, 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 Indonesia who was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under 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 children.<sup>1</sup>

The director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 24, 2008.

On appeal, counsel asserts that the director failed to “consider a relief or benefit available to this beneficiary under the LIFE Act.” Counsel further asserts that the director incorrectly stated that the applicant is the spouse of a U.S. citizen. Counsel notes that the applicant’s Form I-130 was filed by her U.S. citizen son. *Statement on Notice of Appeal (Form I-290B)*, dated July 16, 2008.

In support of the waiver application, the record includes, but is not limited to, counsel’s brief, court dispositions, financial documentation, an employment verification letter, the applicant’s son’s naturalization certificate, and an approved Form I-130 Alien Relative Petition. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff’d. 345 F.3d 683 (9th Cir. 2003).

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

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<sup>1</sup> The record reflects that on October 7, 1992, the applicant was convicted of petty theft in violation of California Penal Code § 488, and ordered to serve probation. The applicant’s offense was punishable by a term of imprisonment not exceeding six months. Cal. Penal Code § 490 (West 1992). Aliens who have been convicted of crimes involving moral turpitude are inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant is eligible for the “petty offense” exception to inadmissibility arising under section 212(a)(2)(A)(i)(I) of the Act, we need not address the issue of whether her offense is a crime involving moral turpitude. See Section 212(a)(2)(A)(ii)(II) of the Act.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant entered the United States on April 14, 1996 using a false passport and visa. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact to procure admission into the United States. The applicant does not contest her inadmissibility on appeal.

On appeal, counsel requests that the AAO “considers the eligibility of this beneficiary for adjustment of status based on Section 245(i).”

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Secretary, Department of Homeland Security, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and an immigrant visa is immediately available to her at the time her application is filed. *See* Section 245(a) of the Act. An alien who enters the United States without inspection or who has otherwise violated her status may apply for adjustment of status if an alien relative petition or application for labor certification was filed on or before April 30, 2001. *See* Section 245(i) of the Act; 8 C.F.R. § 245.10. Here, the applicant did not enter the United States without inspection or violate her status after lawful admission, but was admitted under a false identity, and is therefore inadmissible under section 212(a)(6)(C)(i). Moreover, eligibility for adjustment of status under section 245(i) of the Act does not mean that section 245(i), by itself, waives inadmissibility. In *Acosta v. Gonzalez*, 439 F.3d 550, 556 (9<sup>th</sup> Cir. 2006), the Ninth Circuit Court of Appeals concluded that section 245(i) does not, by itself, waive inadmissibility under the unlawful presence ground of inadmissibility, section 212(a)(9)(B) of the Act, and an alien must obtain a waiver of inadmissibility under section 212(a)(9)(B)(v). Similarly, in the present matter, the applicant must obtain a section 212(i) waiver of the ground of inadmissibility arising under section 212(a)(6)(C)(i) of the Act.

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 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a

qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In the instant case, the applicant does not appear to have any qualifying relatives through whom she can claim eligibility for a waiver. The applicant has only listed her children as qualifying relatives on her Application for Waiver of Grounds of Inadmissibility (Form I-601). Although the director referred to the applicant's spouse as a United States citizen, this appears to have been an error, as the applicant has not asserted that her spouse is a United States citizen and qualifying relative for waiver purposes. The applicant is applying for adjustment of status based on an underlying approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen child on her behalf. The record does not reflect that the applicant's parents or spouse are U.S. citizens or lawful permanent residents. Accordingly, the applicant has not established that she is eligible for a section 212(i) waiver of inadmissibility, and the appeal must be dismissed as moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not demonstrated that she is eligible for a waiver. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.