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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

tl5



FILE: 

Office: LAGUNA NIGUEL (California)

Date: FEB 08 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)

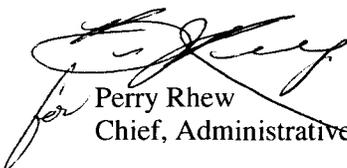
ON BEHALF OF APPLICANT:



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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Laguna Niguel, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The applicant is a native and citizen of Mexico. The record indicates that during her adjustment interview before an Immigration Officer on January 10, 1989, the applicant testified that in support of her Special Agricultural Worker application she had submitted a letter, signed by [REDACTED] dated September 13, 1988, certifying that she worked for 121 days in a mixed vegetable field between December 1985 and April 1986. At her interview on January 10, 1989, and in an affidavit, the applicant admitted that she had never worked in agriculture and for [REDACTED]. The applicant also admitted paying \$320.00 for the fraud document through friends of [REDACTED] as supporting evidence to her Special Agricultural Worker application. The applicant was thus found to be inadmissible 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 sought to procure a visa by fraud or willful misrepresentation. The applicant seeks 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 Legal Permanent Resident mother.

The 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. The director noted that the applicant claimed her children would suffer hardship, but did not claim hardship to a qualifying relative. *Decision of the Director*, dated September 15, 2008.

On appeal, counsel states, generally, that the applicant has submitted sufficient evidence to establish extreme hardship to her qualifying relative. Counsel submits a brief and additional evidence. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant is the beneficiary of a Form I-130, Petition for Alien Relative, filed on May 22, 2008, on behalf of the applicant by her United States citizen daughter. On May 22, 2008, simultaneously with the Form I-130, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 2, 2008, the applicant filed a Form I-601. On September 12, 2008, the director simultaneously approved the Form I-130 petition, and denied both the Form I-485 application, and the Form I-601 application.

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....

Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6) – Special agricultural workers, provides in pertinent part, that:

6) Confidentiality of information

(A) In general,

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may -

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an

applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(7) Penalties for false statements in applications.-

(A) Criminal penalty.-Whoever-

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or,

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.-An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except as pertains to her application for Special Agricultural Worker status. In addition, the applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the acting district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed, the district director's decision is withdrawn and the waiver application declared moot. The director shall reopen and continue to process the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) accordingly.