

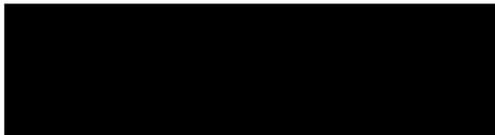
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

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DATE: JUL 28 2011

Office: BALTIMORE

FILE:

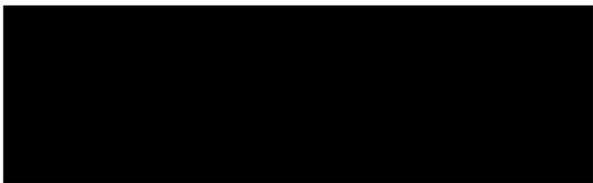


IN RE: Applicant:



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,

fr

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The record reflects that the applicant, a native and citizen of Peru, procured entry to the United States in October 1995 on a C1/D crewman visa obtained by presenting a false employment letter from Carnival Cruise Lines. The applicant was thus 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 procuring entry into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she 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 U.S. citizen spouse.

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 Exclusion (Form I-601) accordingly. *Decision of the District Director*, dated May 19, 2004.

On appeal, the AAO determined that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *Decision of the AAO*, dated November 3, 2008.

In support of the instant motion, counsel for the applicant submits the following *inter alia*: affidavits from the applicant's spouse, father and mother and evidence of their status in the United States; financial documentation; medical documentation pertaining to the applicant's parents; information about country conditions in Peru; and an employment confirmation letter for the applicant's spouse.

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 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...

The record indicates that in May 2009, the USCIS-Vermont Service Center received a letter from the petitioner of the applicant's Form I-140, Immigrant Petition for Alien Worker, namely, United States Services Industries (USSI), acknowledging that USSI wanted to substitute the labor certification that was filed on behalf of the applicant in a petition for another individual. Based on USSI's request, the approval of the Form I-140 filed by USSI on behalf of the applicant was revoked in accordance with 8 CFR 205.1(a)(3)(iii)(C). See *Letter from Center Director-USCIS Vermont Service Center*, dated May 15, 2009.

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...

(iii) Petitions under section 203(b)...

(C) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitioner.

As the petitioner of the Form I-140 has provided written notice requesting substitution of the labor certification for another individual and the Form I-140 on behalf of the applicant has been revoked as of May 15, 2009, the Form I-601 submitted by the applicant can not be reviewed and adjudicated by the AAO, as there is no longer an underlying approved immigrant petition at this time. In the absence of an underlying approved immigrant visa petition¹, 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 The AAO notes that the record does not contain any documentation establishing that the applicant's spouse, [REDACTED], has petitioned on behalf of the applicant by filing the Form I-130, Petition for Alien Relative.