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U.S. Department of Homeland Security
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: **JUN 28 2011** Office: ATHENS, GREECE

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The record reflects that the applicant is a 49-year-old-native and citizen of Lebanon who 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 attempting to procure entry into the United States through fraud or the willful misrepresentation of a material fact, to wit: the applicant arrived at Miami International Airport on January 1, 2001, and presented his Lebanese passport, which had two pages missing. In his sworn statement, the applicant indicated that there had been [REDACTED] the smuggler tore out the pages. As the applicant presented a passport without a visa, the immigration inspector charged him with violating section 212(a)(6)(C) of the Act, believing that the applicant was seeking to procure admission into the United States by willfully misrepresenting a material fact.

The record reflects that the applicant requested asylum at the airport and was referred to an asylum-prescreening officer, who interviewed the applicant and issued him a Notice to Appear (Form I-862) before an immigration judge. On October 2, 2003, the immigration judge allowed the applicant to withdraw his application for admission into the United States after the applicant withdrew his asylum request. The immigration judge granted him voluntary departure on or before October 16, 2003. The applicant timely complied with the order and arrived in Lebanon on October 9, 2003. The applicant is the child of a United States Lawful Permanent Resident (LPR) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 his LPR mother.

The Officer-in-Charge found 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 Officer-in-Charge*, dated May 29, 2008.

On appeal, the applicant states that denial of his waiver request will result in extreme hardship to his mother. The applicant states that his mother has medical conditions and that he needs to be with his mother in the United States and take care of her. *Form I-290B*, dated June 6, 2008.

The record includes, but is not limited to, statements from the applicant's mother's physicians in Lebanon and copies of U.S. Department of State Country Report on Human Rights Practices on Lebanon, dated March 31, 2008. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.

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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility. It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

In this case, the applicant presented a valid passport issued in his name. Two pages were removed from the passport, which may or may not have contained a fraudulent visa. The applicant presented the passport to an immigration official for admission into the United States. Since the applicant presented a valid passport and no fraudulent visa in his attempt to enter the United States, he has not committed any fraud or willful misrepresentation of a material fact. The applicant is therefore not inadmissible under section 212(a)(6)(C) of the Act. The record shows that the immigration judge found that the applicant did not commit any fraud in his attempt to enter the United States. The trial attorney's note indicated that "212(a)(6) – fraud charge has not been sustained by the IJ." Therefore, based on the evidence in the record, the AAO finds that the applicant did not commit any fraud or make a willful misrepresentation of a material fact to a United States government official in order to procure a benefit under the Act, for which he otherwise would not have been eligible.

The AAO finds that the Officer-in-Charge erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) is moot and will thus not be addressed.

ORDER: The Officer-in-Charge's decision is withdrawn as it has not been established that the applicant is inadmissible. The appeal is dismissed as the underlying application is moot.