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

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U.S. Citizenship  
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Services



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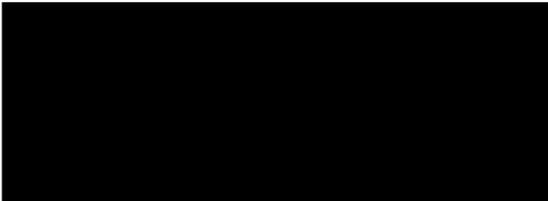
FILE: [REDACTED] Office: BUFFALO, NY Date:

MAR 31 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:

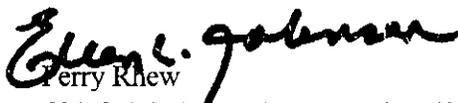


INSTRUCTIONS:

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 Khew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Buffalo, New York and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The applicant is a native and a citizen of India 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 having sought a benefit under the Act through fraud or willful misrepresentation. She is the spouse of a U.S. citizen and the mother of two U.S. citizens. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *District Director's Decision*, dated January 24, 2007.

On appeal, counsel asserts that the District Director relied on the higher standard of extreme hardship used in suspension of deportation or cancellation of removal cases in adjudicating the applicant's waiver request. He further asserts that the decision failed to consider all of the facts in the applicant's case on a fair basis. *Form I-290B, Notice of Appeal or Motion*, dated February 7, 2007.

The record of proceeding includes, but is not limited to, the following evidence: a statement from the applicant's spouse; sworn statements from the applicant; affidavits attesting to the validity of the applicant's marriage; tax returns and W-2 forms for the applicant and her spouse; earnings statements for the applicant and her spouse; bank and insurance statements; and letters of support for the applicant. The entire record was reviewed and all relevant evidence considered in reaching this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record reflects that, on July 8, 1995, the applicant attempted to enter the United States using another individual's passport and visa. On January 28, 1996, the applicant again misrepresented her identity in seeking asylum in the United States. As the applicant has twice sought to obtain admission to the United States through fraud or the willful misrepresentation of a material fact, she is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a section 212(i) waiver of her inadmissibility.

The AAO will not, however, determine whether the record establishes that the applicant's inadmissibility would result in extreme hardship to a qualifying relative under section 212(i) of the Act, as the record fails to demonstrate that she is the beneficiary of an approved Form I-130, Petition for Alien Relative, on which to base a Form I-485, Application to Register Permanent Residence or Adjust Status. The record contains a June 1, 2009 decision issued by the Field Office Director, Hartford, Connecticut revoking the approved Form I-130 benefiting the applicant. A review of relevant United States Citizenship and Immigration Services (USCIS) data bases finds no evidence that another immigrant visa petition has been approved on the applicant's behalf.

The purpose of the Form I-130 is to establish for immigration purposes the validity of the petitioning relationship between the applicant and her spouse, which underlies her eligibility for adjustment. In the present case, the Form I-130 benefiting the applicant has been revoked. Therefore, she is not eligible to apply for adjustment of status and her Form I-485 could not be approved even if she were to be found eligible for a waiver of her 212(6)(C)(i) inadmissibility. As a result, the AAO finds no purpose would be served in considering the applicant's waiver application.

The immigrant visa petition underlying the applicant's adjustment application has been revoked. Accordingly, the AAO will dismiss the appeal as the underlying waiver application is moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is dismissed as the underlying waiver application is moot.