



U.S. Citizenship
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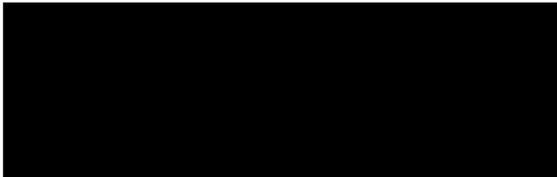
OFFICE: PHILADELPHIA, PA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

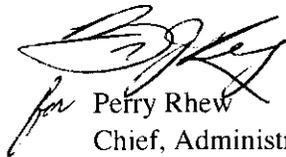
ON BEHALF OF PETITIONER:



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,


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for action consistent with this decision.

The applicant is a native and citizen of Cambodia who was found to be inadmissible to the United States 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 an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. She 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.

The Field Office Director determined that the applicant had failed to establish that a bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 5, 2009.

On appeal, counsel asserts that the Field Office Director failed to consider the evidence of extreme hardship to the applicant's spouse in the aggregate. Counsel contends that the evidence of record is sufficient to establish extreme hardship to the applicant's spouse. *Form I-290B, Notice of Appeal or Motion*, dated June 29, 2009; *see also counsel's brief*.

The record includes, but is not limited to, counsel's brief; statements from the applicant and her spouse; medical records relating to the applicant's spouse; tax returns and W-2 forms; bank statements, and other financial documents; supportive statements from family and friends; bills; and country conditions information relating to Cambodia. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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 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.

The record reflects that the applicant entered the United States on March 9, 2001, using a nonimmigrant B-2 visa and did not depart when her visa expired on September 8, 2001. On March 30, 2007, the applicant married her United States citizen spouse. On May 8, 2007, the applicant's spouse filed a Form I-130 on the applicant's behalf. On the same date, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status based on the petition.

On August 31, 2007, the Field Office Director denied the Form I-130 benefitting the applicant based on her finding that the record did not establish that the applicant had terminated the previous marriage she had claimed when she applied for her 2001 nonimmigrant visa to the United States. The Field Office Director indicated that at the time the applicant applied for her nonimmigrant visa, she and the individual she then claimed as her spouse were interviewed by a Department of State consular officer and would have been required to provide documentation of their marriage and their residence at the same address. The Field Office Director also noted that the individual identified as the applicant's spouse continued to list the applicant as his wife on two subsequent nonimmigrant visa applications. Accordingly, the Field Office Director found that the record did not establish that the marriage between the applicant and her United States citizen spouse was bona fide and valid for immigration purposes.

On July 7, 2008, the applicant's spouse filed a second Form I-130, which was approved on May 28, 2009, and the applicant a second Form I-485 to which she attached a statement stating that the marriage to which she had testified at the time of her 2001 nonimmigrant visa interview never existed and that she had presented a fraudulent marriage certificate to the consular officer.

While the AAO notes the approval of the second Form I-130 benefitting the applicant, we, nevertheless, do not find the record to include evidence that would overcome the Field Office Director's August 31, 2007 decision questioning the bona fides of the applicant's marriage to her United States citizen spouse. Although at the time of her second adjustment interview on May 28, 2009, the applicant stated that she had misrepresented her marital status at the time of her 2001 nonimmigrant visa interview, the record fails to indicate that she offered any documentation or explanation that would support this claim, including any relevant documentation from Cambodian records. The AAO notes that, by itself, the applicant's assertion that she misrepresented her marital status at her 2001 nonimmigrant visa interview does not overcome the information she previously provided on the OF-156 or the documentation she submitted to the consular officer to establish her marriage. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO does not find the current record to establish that the applicant's marriage to her United States citizen spouse is valid for immigration purposes and, therefore, that she has the qualifying relative on which to base a waiver application. We therefore find no purpose would be served by considering the applicant's eligibility for a section 212(i) waiver at this time. Accordingly, we will return the matter to the Field Office Director to obtain additional evidence, including available

Cambodian records and/or statements from individuals who dealt with or knew the applicant prior to her 2001 trip to the United States.

Should the applicant fail to provide sufficient evidence to establish that she misrepresented her marital status at the time of her 2001 nonimmigrant visa application, the Field Office Director shall issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should the validity of the applicant's marriage to her United States citizen spouse be established, the Field Office Director shall return the applicant's case to the AAO for consideration on its merits.

ORDER: The matter is remanded to the Field Office Director for further processing consistent with this decision.