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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5.

DATE: AUG 13 2012 OFFICE: LIMA, PERU

FILE: [REDACTED]

IN RE: APPLICANT: [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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further proceedings consistent with this decision.

The applicant is a native and citizen of Bolivia who attempted to procure admission to the United States on August 27, 2006 using an F-1 student visa. She 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 attempted to procure admission to the United States through fraud or misrepresentation. The applicant was also found to be inadmissible under section 212(a)(6)(G) of the Act for violating her student visa. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative and an approved Petition for Alien Fiancée. 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 U.S. Citizen spouse.

The Field Office Director concluded that the applicant remained inadmissible under section 212(a)(6)(G) until August 23, 2011, a ground of inadmissibility for which there is no waiver. See *Decision of Field Office Director* dated August 26, 2010. The application was denied accordingly.

On appeal, counsel for the applicant contends that the Field Office Director erred in finding the applicant inadmissible pursuant to section 212(a)(6)(G) of the Act because she did not violate her student visa by moving from a private to a public school. Counsel asserts that the Field Office Director should find that section 212(a)(6)(G) of the Act does not apply to the applicant, and then analyze the I-601 application in terms of extreme hardship to the applicant's spouse. Counsel explains that the applicant's spouse suffers from severe psychological difficulties, including PTSD, given the present separation from the applicant. Counsel indicates that the applicant's spouse would have to forgo his education, his job in real estate, and his family and community ties if he moved to Bolivia.

The record includes, but is not limited to, statements from the applicant and her spouse, letters of support from family, friends, and community members, medical records, a psychological evaluation, financial and employment documents, evidence of birth, marriage, residence, and citizenship, and other applications and petitions filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO will first address the question of whether the applicant is admissible to the United States.

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

Student Visa Abusers – An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under

section 214(l)¹ is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

Section 214(m) of the Act states in pertinent part:

....

(2) An alien who obtains the status of a nonimmigrant under clause (i) or (iii) of section 101(a)(15)(F) in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 101(a)(15)(F) shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

Counsel asserts that the applicant, who obtained her multiple-entry F-1 visa on August 25, 2006, is not inadmissible pursuant to section 212(a)(6)(G) of the Act because there was no evidence to show that she violated section 214(m) of the Act by terminating her study at a private school and undertaking a course of study at a public school. The AAO finds counsel's assertions persuasive. However, this issue is now moot. The applicant was deemed to have violated her F-1 status on August 25, 2006. The record reflects that on that date she withdrew her application for admission, was permitted to return to Bolivia, and has remained outside the United States since that date. The AAO therefore finds that the applicant has remained outside the United States for the continuous five year period and, if she ever was, is no longer inadmissible pursuant to section 212(a)(6)(G) of the Act.

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 [Secretary] may, in the discretion of the [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

¹ Section 214(l) of the Act was re-designated as section 214(m) of the Act by Pub.L.106-386, but without making a conforming change to the reference to section 214(l) in section 212(a)(6)(G) of the Act.

[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 Field Office Director found that on August 25, 2006 when the applicant attempted to procure admission to the United States using her F-1 nonimmigrant visa, immigration officials discovered that the applicant was no longer in valid student status because when she was previously in the United States in F-1 status she had earned money by taking care of her sponsor's mother and translating documents in his law office, thus violating her student status. The Field Office Director concluded that the applicant made a material misrepresentation when she knowingly presented her student visa in an attempt to gain entry into the United States even though she was aware that she was no longer in valid student status. See *Decision of Field Office Director* dated August 26, 2010. The applicant does not contest this finding on appeal.

In her decision, the Field Office Director found the applicant inadmissible under section 212(a)(6)(G) of the Act and, as there is no waiver of that ground of inadmissibility, denied the waiver application without examining whether the applicant is eligible for a waiver of inadmissibility under section 212(i) of the Act. As inadmissibility under section 212(a)(6)(G) of the Act is no longer an issue, there is no impediment to reviewing eligibility for a waiver under section 212(i) of the Act. The AAO, therefore, remands the matter to the Field Office Director to make a determination on the claims of hardship to the applicant's spouse submitted in support of the waiver and appeal. If after evaluating the evidence the decision is adverse to the applicant a new decision shall be issued outlining the findings. That decision shall be certified to the AAO for review.

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