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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**



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[Redacted]

DATE: **AUG 27 2012** OFFICE: NORFOLK, VA

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)

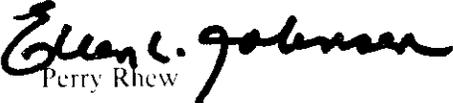
ON BEHALF OF APPLICANT:

[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.

Thank you.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Norfolk, Virginia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as unnecessary.

The applicant is a native and citizen of Mongolia who has resided in the United States since November 8, 1998, when he was admitted in F-1 nonimmigrant status. He 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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant 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 his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated April 8, 2011.

On appeal, counsel contends that the applicant is not inadmissible for misrepresentation or fraud because he intended to study at the Sanz school and made proactive steps to locate the school. Counsel additionally asserts that the applicant has shown his spouse would experience extreme hardship given the applicant's inadmissibility.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, statements from the applicant and his spouse, letters of support from community members, evidence of employment, documentation with respect to dual citizenship, evidence of criminal and removal proceedings, and other petitions and applications filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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 [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.

In the present case, the record reflects that the applicant was issued an F-1 nonimmigrant visa on September 11, 1998. The applicant was admitted to the United States at Los Angeles International Airport on November 8, 1998 after representing to immigration officials that he intended to attend the Sanz school in Washington, D.C. The applicant attested in sworn statements that before he was admitted to the United States, he worked for a company in Mongolia which provided the financial support necessary to study English in the United States for a year. He indicated that when he arrived in D.C., a contact at the Mongolian Embassy drew him a map with directions to the Sanz school. The applicant stated that he attempted to find the school using those directions, and also asked people on the street for assistance. Despite his efforts, the applicant indicated that he was unable to locate the school. The applicant stated that the boss at his Mongolian company could not give him any more money to attend school as they were bankrupt. The Field Office Director found that the applicant misrepresented his intentions regarding attending the Sanz School pursuant to the terms of his nonimmigrant visa because he never attended the Sanz school or any other school.

Although the record indicates that the applicant failed to attend the Sanz school, it does not demonstrate that the applicant did not intend to attend the school when he procured a visa or admission into the United States. The applicant attested that upon his arrival in Washington, D.C. he attempted to locate the Sanz school, but was unable to due to communication difficulties and a lack of cultural awareness. He indicates that he gave up his search soon thereafter because he learned that his sponsor was going bankrupt and was unable to further finance his education. These actions, attested to under oath, demonstrate a sincere effort to locate and attend the school. Therefore, the AAO finds that although the applicant did not actually attend the Sanz school, the record does not indicate that he misrepresented his intention to attend school when applying for a nonimmigrant visa or procuring admission at the port of entry.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether his spouse would experience extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed as the applicant is not inadmissible and the waiver application is moot.

ORDER: The appeal is dismissed as unnecessary.