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U.S. Department of Homeland Security
U.S. 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**



H5

[Redacted]

Date: **AUG 30 2012**

Office: DETROIT, MI

[Redacted]

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (the 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, Detroit, Michigan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is unnecessary.

The record reflects that the applicant is a native and citizen of Hong Kong who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 3, 2010.

On appeal, counsel contends the applicant established extreme hardship, particularly considering her husband's medical problems and life-threatening allergies.

The record reflects that in August of 1991, the applicant filed an Application for Temporary Residence (legalization application) with the Immigration and Naturalization Service (now known as Citizenship and Immigration Services (USCIS)). In her application, the applicant made false statements claiming she was eligible to be a class member under *Catholic Social Services v. INS*. Specifically, the record shows that the applicant claimed she was present in the United States since before January 1, 1982, in order to be eligible for class membership when, in fact, she was in Hong Kong at the time. Based on this misrepresentation, the Field Office Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and advised the applicant to file an Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act.

As discussed below, the AAO finds that the Field Office Director erred in concluding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on information provided in the applicant's legalization application.

Section 245a of the Act, 8 U.S.C. 1255a, adjustment of status of certain entrants before January 1, 1982, to that of a person admitted for lawful residence, states in pertinent part:

(c)(5) Confidentiality of information. -

(A) In general. - Except as provided in this paragraph, neither the Attorney General [Secretary of Homeland Security], nor any other official or employee of the Department of Justice [Department of Homeland Security], or bureau or agency thereof, may -

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures. - The Attorney General [Secretary of Homeland Security] shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures. - The Attorney General [Secretary of Homeland Security] may provide, in the Attorney General's [Secretary's] discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction. -

(i) In general. - Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions. - Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime. - Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) Penalties for false statements in applications. - Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except on her legalization application. In addition, the applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the field office director erred in concluding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act as the fraudulent information on her legalization application cannot be used to make that finding. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The appeal is dismissed as the waiver application is unnecessary.