

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]

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DATE: DEC 06 2007 OFFICE: SAN FRANCISCO, CA

[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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who has resided in the United States since July 9, 1994, when she presented a fake permanent resident card to immigration officials to procure admission into the United States. 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 procured admission to the United States through fraud or misrepresentation. The applicant is the parent of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative filed by her U.S. Citizen daughter. 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 her U.S. Citizen daughter.

The Field Office Director concluded that the applicant remained inadmissible despite the assertions on her affidavit, and that she did not have a qualifying relative for a waiver. See *Decision of Field Office Director* dated September 26, 2011. The application was accordingly denied. *Id.*

On appeal, counsel submits a brief. Therein, counsel contends that, contrary to the applicant's representations on her sworn statement, she did not present a false permanent resident card to procure admission, and therefore is not inadmissible for fraud or misrepresentation.

The record includes, but is not limited to, statements from the applicant, other applications and petitions, and evidence of birth, marriage, residence, and citizenship. 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 applicant admitted in a sworn statement that on July 9, 1994 she entered the United States by car with a coyote and a fake green card. *Sworn statement*, April 27, 2011. She adds that although she did not speak to an immigration officer, she did present the fake green card to the immigration officer. *Id.* Counsel asserts that the applicant's sworn statement is not true, she was never questioned by border patrol, and did not present any documentation to any immigration officials. Counsel proffers the applicant's subsequently written declaration in support. *Personal declaration*, June 1, 2011. Therein, the applicant claims although she was given a card by the coyote before she got into the car, she never presented the card to immigration officials. *Id.* She states that the coyote was the driver, and she did not know if he presented documents on her behalf to immigration officials. *Id.* Counsel moreover contends that when she gave her sworn statement she was not represented, and because the interview was not recorded, there is no way to tell if the questions were leading.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, the applicant has not met her burden of proof to demonstrate she did not misrepresent her identity and immigration status in order to procure admission into the United States. The applicant admitted under oath that she presented a fake green card to immigration officials and was subsequently admitted into the United States. *Sworn statement*, April 27, 2011. The record reflects that the applicant made this statement freely, voluntarily, and willingly, and that she swore to tell the truth. *Sworn statement*, April 27, 2011. Furthermore, although counsel was not present during the interview, the applicant was aware from the interview notice that she could bring an attorney or authorized representative to appear on her behalf, and apparently chose not to have one present. Counsel does not cite any law or regulation requiring an attorney to be present or for a statement to be recorded in order for USCIS to incorporate a sworn statement into the applicant's record. Moreover, although the applicant contradicts her sworn statement in a subsequent declaration, the AAO finds that this self-serving declaration, made after inadmissibility was found does not serve to meet the applicant's burden of proof.

As such, despite counsel's assertion to the contrary, it has not been established by a preponderance of the evidence, that the applicant did not attempt to procure admission into the United States by fraud and/or misrepresentation, specifically, by claiming she did not present a fake green card to immigration officials. The AAO thus concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant indicates on the I-601 application that her U.S. Citizen daughter is her qualifying relative for purposes of this waiver. The AAO notes that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Only hardship to an applicant's U.S. Citizen or lawful permanent resident parent or spouse can be considered in an analysis of extreme hardship for a waiver of inadmissibility under section 212(i) of the Act. In the present case, the applicant has not shown she has a qualifying relative for a waiver. Without a qualifying relative, the AAO cannot find that the applicant has demonstrated the existence of extreme hardship to a qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.